



No. 7657



Vol 1862

IN THE
United States
Circuit Court of Appeals

FOR THE NINTH CIRCUIT.

HARRY W. BERDIE, LOS ANGELES
MILK INDUSTRY BOARD, MILK
PRODUCERS, INC., RICHARD
CRONSHEY, WILLIAM CORBETT,
DAVID P. HOWELLS, GEORGE A.
CAMERON, F. A. LUCAS, EARL
MAHARG, A. G. MARCUS, M. H.
ADAMSON, T. E. DAY, W. H. STAB-
LER, MAX BUECHERT, C. W. HIB-
BERT, W. J. KUHRT; GEORGE E.
PLATT, A. M. McOMIE, T. H. BRICE,
T. M. ERWIN, A. R. READ, R. C.
PERKINS, ROSS WEAVER,

Appellants.

v/s.

CHARLES J. KURTZ, WESTERN HOL-
STEIN FARMS, INC., VALLEY
DAIRY, INC., and the LUCERNE
CREAM AND BUTTER COMPANY,

Appellees.

Appeal From the District Court of the United States,
Southern District of California,
Central Division

TRANSCRIPT OF RECORD

NOV 14 1934

PAUL P. O'BRIEN,

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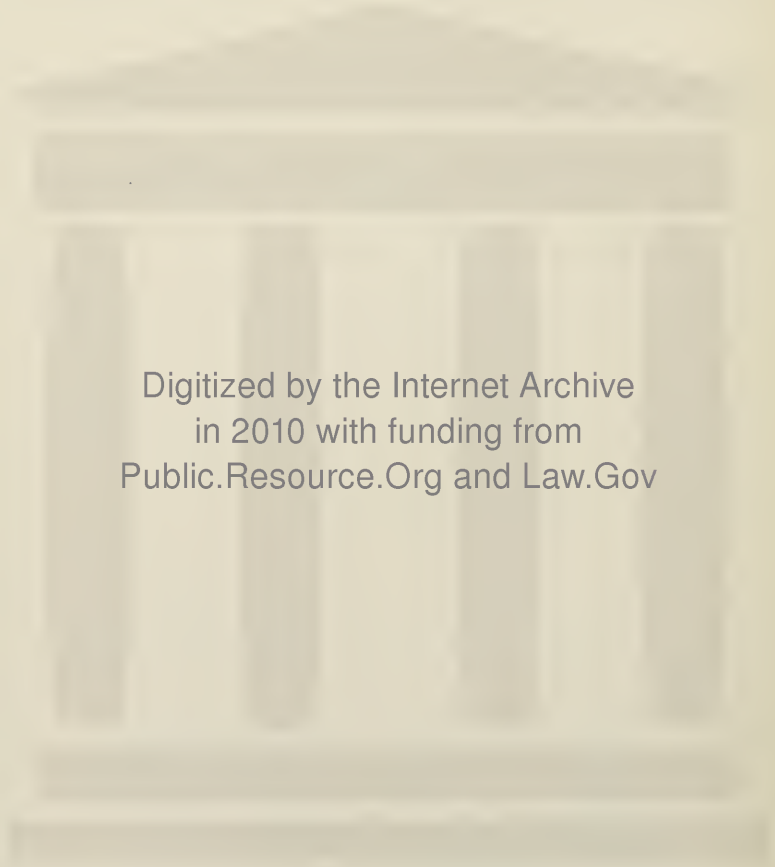
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TRANSCRIPT OF RECORD

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(Clerk's Note: When deemed likely to be of important nature, errors or doubtful matters appearing in the original record are printed literally in italic; and, likewise, cancelled matter appearing in the original record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italics the two words between which the omission seems to occur.)

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Citation

United States of America—ss.

TO CHARLES J. KURTZ, WESTERN HOLSTEIN FARMS, INC., VALLEY DAIRY, INC., and the LUCERNE CREAM AND BUTTER COMPANY; and LEWIS D. COLLINGS, EDWARD M. SELBY, AND H. C. JOHNSTON, their attorneys, Greeting:

You are hereby cited and admonished to be and appear at a United States Circuit Court of Appeals for the Ninth Circuit, to be held at the City of San Francisco, in the State of California, on the 16th day of November, A.D. 1934, pursuant to Order Allowing Appeal in the Clerk's Office of the District Court of the United States, in and for the Southern District of California, in that certain action wherein HARRY W. BERDIE, LOS ANGELES MILK INDUSTRY BOARD, MILK PRODUCERS, INC., RICHARD CRONSHEY, WILLIAM CORBETT, DAVID P. HOWELLS, GEORGE A. CAMERON, F. A. LUCAS, EARL MAHARG, A. G. MARCUS, M. H. ADAMSON, T. E. DAY, W. H. STABLER, MAX BUECHERT, C. W. HIBBERT, W. J. KUHRT, GEORGE E. PLATT, A. M. MCOMIE, T. H. BRICE, T. M. ERWIN, A. R. READ, R. C. PERKINS, ROSS WEAVER, are appellants, and you are appellees to show cause, if any there be, why the order and decree of preliminary injunction granted against the said appellants in the said cause mentioned, should not be corrected, and speedy justice should not be done to the parties in that behalf.

WITNESS, the Honorable Geo. Cosgrave, United States District Judge for the Southern District of California, this 18th day of October, A.D. 1934, and of the Inde-

pendence of the United States, the one hundred and fifty-ninth.

GEO. COSGRAVE,
U. S. District Judge for the Southern District
of California.

CT:MC

SERVICE of Citation, together with copy of Petition for Appeal, Assignments of Error and Order Allowing Appeal, is acknowledged this 22 day of October, 1934.

LEWIS D. COLLINGS,
EDWARD M. SELBY,
Attorneys for plaintiffs and Appellees.

Received copy of the within this Oct. 22, 1934. H. C. Johnston, Walter F. Haas, RB.

[Endorsed]: In The United States Circuit Court of Appeals for the Ninth Circuit. Harry W. Berdie, et al., Appellants, v. Charles J. Kurtz, et al., Appellees. Citation. Filed Oct 22, 1934 R. S. Zimmerman, Clerk. By L. Wayne Thomas, Deputy Clerk.

IN THE DISTRICT COURT OF THE
UNITED STATES

SOUTHERN DISTRICT OF CALIFORNIA

CENTRAL DIVISION

CHARLES J. KURTZ, doing business as GOLDEN WEST CREAMERY COMPANY; WESTERN HOLSTEIN FARMS, INC., a corporation; VALLEY DAIRY CO., INC., a corporation; THE LUCERNE CREAM AND BUTTER COMPANY, a corporation,

Plaintiffs,

vs.

HARRY W. BERDIE, LOS ANGELES MILK INDUSTRY BOARD, MILK PRODUCERS, INC., a California Corporation, RICHARD CRONSHAY, WILLIAM CORBETT, DAVID P. HOWELLS, GEORGE A. CAMERON, F. A. LUCAS, EARL MAHARG, A. G. MARCUS, M. H. ADAMSON, T. E. DAY, W. H. STABLER, MAX BUECHERT, C. W. HIBBERT, W. J. KUHRT, GEORGE E. PLATT, A. M. McOMIE, T. H. BRICE, T. M. ERWIN, A. R. READ, R. C. PERKINS, ROSS WEAVER, JOHN ONE, JOHN TWO, JOHN THREE, JOHN FOUR, JOHN FIVE, JOHN SIX, JOHN SEVEN, JOHN EIGHT, JOHN NINE, JOHN JOHN TEN, JOHN ONE COMPANY, a Co-Partnership; JOHN TWO COMPANY, a Co-Partnership; JOHN THREE COMPANY, a Co-Partnership; JOHN ONE COMPANY, a Corporation; JOHN TWO COMPANY, a Corporation; JOHN THREE COMPANY, a Corporation;

Defendants.

In Equity No. 144-C

BILL FOR INJUNCTION

TO THE HONORABLE, THE JUDGES OF THE ABOVE ENTITLED COURT:

The above named plaintiffs, bring this their Bill of Complaint against the above named defendants, and in so doing, allege and represent to the above entitled Court and the Judges thereof, as follows, to-wit:

I.

Each of the above named plaintiff corporations is a corporation duly organized and existing under and by virtue of the laws of the State of California, and doing business exclusively in said State.

The plaintiff, Charles J. Kurtz, is doing business under the fictitious firm name and style of Golden West Creamery Company, and has complied with the statutes in such case made and provided.

II.

The defendant Los Angeles Milk Industry Board claims that it is a board selected as provided in that certain document entitled, "License for Milk, Los Angeles Milk Shed," issued by the Secretary of Agriculture of the United States on November 16, 1933, and by its terms declared to be effective on November 20, 1933, and particularly in Exhibit "D" attached to said document, all of which is hereinafter more particularly set forth; the defendants Richard H. Cronshey, William Corbett, David P. Howells, George A. Cameron, F. A. Lucas, and Earl Maharg, claim that they are the six individual members of said Los Angeles Milk Industry Board selected in accordance with the provisions of sub-

division (a) of paragraph 1 of Exhibit "D," attached to said "License for Milk, Los Angeles Milk Shed"; the defendants A. G. Marcus, M. H. Adamson, T. E. Day, W. H. Stabler, Max Buechert, and C. W. Hibbert, claim that they are the six members of said board selected in accordance with the provisions of subdivision "b" of paragraph 1 of said Exhibit "D"; the defendant W. J. Kuhrt claims that he is the thirteenth member of said board and the Chairman thereof selected in accordance with the provisions of subdivision (c) of paragraph 1 of said Exhibit "D"; the defendants George E. Platt, A. M. McOmie, T. H. Brice, T. M. Erwin, A. R. Read, R. C. Perkins, and Ross Weaver claim that they are alternate members of said Los Angeles Milk Industry Board; the individual defendants mentioned in this paragraph are now, and at all times since on or about the 18th day of November, 1933, have been acting as members of said Los Angeles Milk Industry Board, and each of said defendants is now, and at all times since on or about the 18th day of November, 1933, has been acting as a member of said board; upon information and belief plaintiffs allege that said George E. Platt, A. M. McOmie, T. H. Brice, T. M. Erwin, A. R. Read, R. C. Perkins and Ross Weaver have not been selected as members of said board nor has either or any of them ever been selected as a member of said board in accordance with or pursuant to any of the provisions of said "License for Milk, Los Angeles Milk Shed"; upon information and belief plaintiffs allege that said F. A. Lucas never was selected as a member of said Los Angeles Milk Industry Board in accordance with or pursuant to the provisions of subdivision (a) of paragraph 1

of said Exhibit "D"; upon information and belief plaintiffs allege that said Max Buechert never was selected as a member of said Los Angeles Milk Industry Board in accordance with or pursuant to the provisions of subdivision (b) of paragraph 1 of said Exhibit "D"; upon information and belief plaintiffs allege that said W. J. Kuhrt never was selected as a member or as the thirteenth member of said Los Angeles Milk Industry Board in accordance with or pursuant to the provisions of subdivision "c" of paragraph 1 of said Exhibit "D."

III.

The defendant Milk Producers, Inc., is a private corporation organized and existing under and by virtue of the laws of the State of California, and is asserting rights and making demands and exercising purported powers in connection with said alleged license, all of which is hereinafter more particularly set forth.

IV.

That the defendant, Harry W. Berdie, as plaintiffs are informed and believe, and upon such information and belief allege, is Regional representative of the licensing and enforcement section of the Agricultural Adjustment Administration of the United States Department of Agriculture; and in like manner, plaintiffs herein allege that said Harry W. Berdie assumes and claims the right and power of enforcement of the provisions of the license agreement and marketing agreement hereinafter specified and described and referred to herein.

V.

That the defendants John One to John Ten, inclusive, John One Company to John Three Company, a Co-Part-

nership, inclusive, and John One Company, a Corporation to John Three Company, a Corporation, inclusive, are sued herein under fictitious names, their true names being unknown to plaintiffs at this time, and leave of Court will be asked to substitute their true names when and if the same are ascertained.

Each and all of the defendants herein are residents of the above named Federal District, to-wit, the Southern District of California.

VI.

Plaintiffs further allege and show that the matters in controversy in this suit and the questions involved therein are questions arising under the Constitution and the laws of the United States and that, as to each of the plaintiffs herein, the matter in controversy exceeds the sum or value of \$3000.00 exclusive of interest and cost; that the subject matter sought to be protected by this suit, to-wit, the business of each of said plaintiffs, and the right of each of said plaintiffs to continue the conduct and operation of the same without interference on the part of the defendants, all as hereinafter set forth, is severally of a value greatly in excess of \$3000.00.

VII.

Plaintiffs further show and allege that, while each of them is engaged in separate business, and does not conduct or operate his business jointly or in common with the others, yet each of them is interested in the subject matter of this action. That the said purported license and the said demands made, and to be made, thereunder, upon each of the plaintiffs by the defendants, and the threatened enforcement of said demands and of said

license by the defendants, have a common and similar effect upon each of these plaintiffs and their several businesses. That the questions in controversy submitted by these plaintiffs are questions of common and general interest to the class of persons constituting all producers and distributors of fluid milk within said territory designated by said purported license as the Los Angeles sales area, that the members of said class are so numerous as to make it impracticable to bring them all before the above entitled court, and for said reason plaintiffs sue for themselves and for all the members of said class, pursuant to Equity Rule 38.

VIII.

On or about May 12, 1933, there was enacted by the Congress of the United States a statute designated as an act of May 12, 1933, Chapter 25, 48 Statutes, 73 Congress H. R. 3635, being an act known as the National Agricultural Adjustment Act, and entitled "An Act to relieve the existing national economic emergency by increasing agricultural purchasing power, to raise revenue for extraordinary expenses incurred by reason of such emergency, to provide emergency relief with respect to agricultural indebtedness, to provide for the orderly liquidation of joint-stock land banks, and for other purposes." So far as it may be valid and not in violation of the Constitution of the United States, said law is now in force and effect, but these plaintiffs contend that said law is in conflict with the Constitution of the United States, and therefore invalid to the extent, and in the respects, and upon the grounds, hereinafter more particularly set forth.

IX.

It is provided by Section 8 of the Act of Congress just above mentioned that:

“In order to effectuate the declared policy the Secretary of Agriculture shall have power—

“(3) to issue licenses permitting processors, associations of producers, and others to engage in the handling, in the current of interstate or foreign commerce, of any agricultural commodity or product thereof. Such licenses shall be subject to such terms and conditions not in conflict with existing acts of Congress or regulations pursuant thereto as may be necessary to eliminate unfair practices or charges that prevent or tend to prevent the effectuation of the declared policy and the restoration of normal economic conditions in the marketing of such commodities or products thereof and the financing thereof * * *.”

X.

On July 22, 1933, the Secretary of Agriculture of the United States, with the approval of the President of the United States, did make, prescribe and publish milk regulations, series 1, as follows:

“ARTICLE I.—DEFINITIONS

SECTION 100. As used in these regulations:

(a) The term “act” means the Agricultural Adjustment Act, approved May 12, 1933, as amended.

(b) The term “person” means individual, partnership, corporation, or association.

(c) The term “Secretary” means the Secretary of Agriculture of the United States.

(d) The term "fluid milk" means milk or any product thereof covered by the definition of fluid milk in the marketing agreement in support of which the license is issued.

(e) The term "distributor" means any person engaged in the business of handling, in the current of interstate or foreign commerce, fluid milk for consumption within the distributive area defined in such agreement.

"ARTICLE II.—LICENSES

SECTION 200. Determination of necessity for licenses.—Prior to entering into any marketing agreement under the act with respect to the handling of milk the Secretary shall determine whether it is necessary to issue a license in support of such agreement in order to eliminate unfair practices or charges that prevent or tend to prevent (1) the effectuation of the declared policy of the act with respect to milk and/or its products, and (2) the restoration of normal economic conditions in the marketing of milk and/or its products and the financing thereof.

SEC. 201. Issuance of license.—If the Secretary so determines that a license is necessary with respect to any such marketing agreement, he shall, upon entering into such agreement, issue a license covering such classes of distributors as he shall provide in the license. While the license is in effect it shall cover every such distributor, irrespective of whether he is a party to the marketing agreement and irrespective of whether he is a distributor at the time the license becomes effective. All milk marketing agreements entered into by the Secre-

tary shall contain a provision whereby the distributors parties thereto shall apply for and consent to licensing under the act. The license shall authorize the distributors covered by it to engage in such business, subject to the terms and conditions of the license. The license shall be effective commencing on such date as the marketing agreement becomes effective, unless the license provides in its terms for a different effective date.

SEC. 202. Notice of licensing.—Public notice of any license issued pursuant to these regulations shall be given, at least 3 days prior to the effective date thereof, by posting a copy of the license in a conspicuous place in the main building of the Department of Agriculture, in Washington, D. C., by issuing press releases containing copies of the license, and by making available in the office of the Secretary copies of such press releases. The license when issued shall be filed in the Department of Agriculture and shall be a public record.

SEC. 203 Suspension and revocation.—Any license issued hereunder may be suspended or revoked with respect to any distributor for violation of the terms or conditions thereof by such distributor or by any of his officers, employees, or agents. The procedure for suspension or revocation proceedings shall be in accordance with General Regulations, Agricultural Adjustment Administration, Series 3.

“ARTICLE III.—CERTIFICATES

SEC. 300. Any distributor licensed pursuant to these regulations may, upon application in accordance with a form prescribed by the Secretary and upon payment of

a fee of \$2, obtain a certificate evidencing the fact that the holder thereof is a licensee under these regulations; but the obtaining of such certificate shall not be necessary to constitute a distributor a licensee. The certificate shall be nontransferable, shall be in effect only so long as the license has not been suspended or revoked with respect to such distributor, and shall be surrendered for cancellation upon the suspension or revocation of the license with respect to such distributor."

On November 16, 1933, the Secretary of Agriculture of the United States issued the document hereinabove mentioned, entitled "License for Milk, Los Angeles Milk Shed" and purported to make it effective as of the date of November 20, 1933, and purported to take such action under and by virtue of the provisions of said National Agricultural Adjustment Act. A true copy of said document is hereto attached, marked Plaintiffs' Exhibit "A" and hereby made part hereof as fully as if set forth herein verbatim.

(A) As part of the preamble to said purported license, Exhibit "A." the Secretary of Agriculture recites as follows:

"WHEREAS, The Secretary finds that the marketing of milk for distribution as fluid milk in the Los Angeles Sales Area and the distribution of said fluid milk are both in the current of interstate commerce and intrastate commerce, which are inextricably intermingled"; (Sec. II, p. 6.)

(B) Said purported license, Exhibit "A" then provides as follows:

“NOW, THEREFORE, the Secretary of Agriculture acting under the authority vested in him as aforesaid,

“Hereby licenses each and every distributor of fluid milk for consumption in the Los Angeles Sales Area to engage in the handling in the current of interstate or foreign commerce of said fluid milk subject to the following terms and conditions”: (Sec. III, p. 6.)

XI.

Said purported license defines Los Angeles sales area as meaning and including the City of Los Angeles, California, and additional territory within the county of Los Angeles and the following adjoining counties, to-wit, the county of Orange, and the westerly portions of San Bernardino and Riverside counties, all entirely within the State of California. (Sec. I, pp. 2 and 3.)

XII.

Said purported license, Exhibit “A,” provides:

“Every distributor shall file, prior to the fifth (5th) day of each month with the Chairman of the Los Angeles Milk Industry Board a statement of (a) the quantity of milk purchased from each producer and (b) as to the production of such distributor a statement of the quantities produced and sold as fluid milk.” (Sec. III, 4(a) p. 7.)

XIII.

Said purported license, Exhibit “A,” further provides that distributors shall not purchase milk from any producer for distribution as Grade A market milk unless such producer authorizes the purchasing distributor to pay over to the Los Angeles Milk Industry Board such

amount as may be determined by said Board provided, however, that such amount shall not exceed one-fourth cent for each pound of butterfat contained in the milk purchased by such distributor. It further provides that distributors having a production of their own shall deduct a like amount for each pound of butterfat contained in milk produced and sold by them and pay the same to said Los Angeles Milk Industry Board and that all distributors, whether they have productions of their own or not shall pay to said Board as distributors an amount equal to that paid by or deducted by them as aforesaid. (Sec. III, 4(b) pp. 7 and 8.)

Said purported license further provides that said Board shall use said funds for the purpose of compiling statistics, making surveys of costs and methods of production and distribution in the Los Angeles market, formulating a program for improving the quality of milk and the standards of the industry generally in the Los Angeles market, arbitrating disputes and engaging in advertising and sales promotion work which will further the interests of the industry. (Sec. III, 4(b) pp. 7 and 8, and Exhibit "D" attached to said Exhibit "A," pp. 59 and 60.)

XIV.

Said purported license, Exhibit "A," further provides that distributors shall not purchase milk for distribution as Grade A market milk from producers not members of some one of seven local associations or organizations of milk producers named therein, unless such producers authorize the purchasing distributor to pay over to the Los Angeles Milk Industry Board an amount for each

pound of butterfat contained in milk purchased from each of said producers equal to the average amount which the members of such association are then authorizing their distributors to pay over to such associations on behalf of their respective members. Provided, however, that such deductions shall in no event exceed one cent per pound of butterfat. Said purported license also provides that similar payments are to be made by distributors having production of their own, and that the sum so paid shall be kept as a separate fund by said Board for the purpose of securing to said producers not members of the said producers associations, advertising, educational, credit and other benefits similar to those secured by the members of said associations by virtue of their payments to said associations. (Sec. III, 4(c) pp. 8. 9 and 10.)

XV.

Said purported license also provides that distributors shall not purchase milk for distribution as Grade A market milk from any producer who is not a member of some one of said seven private, local organizations or associations of milk producers mentioned in said license, unless such producer authorizes the distributor to deduct or cause to be deducted by the particular association of producers of which any such producer is a member, certain amounts specified therein and to be determined by that certain method provided therein, and that said amounts shall be paid to Producers Arbitration Committee, Inc., a private corporation, of which defendant Milk Producers, Inc., a private California corporation is the successor, and that said amounts shall be used by

said defendant for the purpose of equitably allocating the loss involved in handling surplus milk. (Sec. III, 5(a) and (b), pp. 10, 11 and 12.)

That said Milk Producers, Inc., a corporation, owns and operates a surplus plant in the Los Angeles Milk Shed, which said surplus plant is for the purpose of handling all milk from producers in said Los Angeles Milk Shed, having an established base therein fixed in accordance with the provisions of the aforesaid purported License, more particularly Exhibit "C," page 50 of said License, and in accordance with the aforesaid marketing agreement for milk in said Los Angeles Milk Shed, and more particularly Exhibit "C," at page 53 thereof, in excess of the requirements of the distributors in the Los Angeles Sales Area for distribution as fluid milk in said area according to the provisions of said License, and in excess of the requirements of the distributors in the Los Angeles Sales Area, parties to said marketing agreement, for distribution as fluid milk in said area.

That none of the plaintiffs herein are stockholders in or directors of, or have any interest in said Milk Producers, Inc., or its predecessor in interest, Producers Arbitration Committee, Inc., from whom said Milk Producers, Inc., acquired said surplus plant. That each and all of said plaintiffs have in the past handled and disposed of and now handle and dispose of all of their surplus milk, both as distributors and producers, and have handled and disposed of and do now handle and dispose of all of the surplus milk of their producers, and each of them, and that none of said plaintiffs, either

as distributors or producers, or of the producers of said plaintiffs, have delivered or now deliver any milk to said surplus plant, to said Producers Arbitration Committee, Inc., or its successors, Milk Producers, Inc., save and except that since the effective date of said License, plaintiff, Lucerne Cream and Butter Co., has delivered some milk to said surplus plant.

That according to the provisions of said purported License and said marketing agreement, and prior to the said marketing agreement having been approved by the Secretary of Agriculture, and said purported License having been issued by said Secretary of Agriculture, one of the purposes of said surplus plant was for the disposal to distributors of the Los Angeles Sales Area of milk delivered to it in the event of a shortage of milk on the part of said distributors. That prior to the issuance of said marketing agreement and said purported License, one of the plaintiffs herein, to-wit, Valley Dairy Company, Inc., was, on at least two occasions, short of milk for distribution to its customers in the Los Angeles Sales Area and requested of said Producers Arbitration Committee, Inc., then operating said surplus plant, predecessor in interest of said defendant, Milk Producers, Inc., to sell to said Valley Dairy Company, Inc., milk from said surplus plant at the then established price to fill said shortage of milk and enable said Valley Dairy Company, Inc., to distribute to its regular customers in said Los Angeles Sales Area, and said Producers Arbitration Committee, Inc., operating said plant as aforesaid, refused to sell and deliver any milk to said Valley Dairy Company, Inc., although said Producers Arbitration Committee, Inc., and said surplus

plant, had on hand in said surplus plant milk for distribution and sale.

Said purported License also provides that every distributor having a production of his own milk for distribution as Grade A market milk shall pay certain sums each month, to be determined by the method provided therein to Producers Arbitration Committee, Inc., of which defendant Milk Producers, Inc., is the successor, to be used by said defendant for the purpose of equitably allocating the loss of surplus milk. (Sec. III, 5 (c), p. 12.)

XVI.

Said purported License also provides that distributors shall purchase all of their milk requirements of Grade A market milk and Grade A milk for standardization purposes from producers having established bases in the Los Angeles Milk Shed, provided such milk meets all of the health requirements established by the state, county and city health ordinances and regulations within the territory involved. (See Subd. 14, pp. 15 and 16.)

Said purported License and said marketing agreement also provides (License, Exhibit "C," p. 50, et seq., Agreement, Exhibit "C," p. 53, et seq.,) for the establishment of the control of production, and the fixing of a base of each producer marketing milk in the Los Angeles Sales Area on the date of said purported License and said agreement, and establishes the said base by computations covering the period from March 16th, 1933, to June 15th, 1933, inclusive, and does not take into consideration or give any credit in establishing such base of said producers for any production subsequent to June 15th, 1933, and prior to November 20th, 1933, the date

upon which said License became effective, thus making the operation and provisions of the said License retroactive. That by so establishing said base as of November 15th, 1933, the same deprives the producers producing larger quantities of milk after June 15th, 1933, from obtaining the established base price for said milk, and said purported License and said marketing agreement provide for the payment to the producers for such production sold to distributors at a price insufficient to enable said producers to produce and sell said milk except at a loss. That the operation of said terms of said purported License and marketing agreement would put said producers out of business and cause such producers, many of whom furnish milk to the plaintiffs herein, financial losses in excess of \$3000.00, and would amount to a confiscation of the property of said producers without due process of law. That at least two of the plaintiffs herein are producers as well as distributors, and as such producing distributors have production of milk in excess of their base as purported to be established under the aforesaid terms and provisions of said purported License and marketing agreement, and have been ordered by said defendant Los Angeles Milk Industry Board to pay to defendant Milk Producers, Inc., the difference between the base price and the surplus price for said production as said terms "base price" and "surplus price" are defined in said purported License.

XVII.

Said purported License, Exhibit A, also fixes the price which must be paid by distributors to producers for Grade A market milk and for all products and com-

modities falling within the definition of fluid milk as defined therein. (See p. 6 and Exhibit A, attached to said document, pp. 17 to 24.)

XVIII.

Said purported License, Exhibit A, also fixes the prices which shall be paid by distributors to producers for fluid milk, and which may be charged by distributors for said products above mentioned upon sale of the same to consumers and to peddlers for resale. (See p. 6, and Exhibit B, attached to said document, pp. 24a to 52.)

XIX.

All of the provisions and regulations of said purported License above mentioned purport to be applicable according to its terms only within said Los Angeles sales area and only to all producers and distributors engaged in business and doing business therein.

XX.

Each of the plaintiffs herein is engaged in the business of producing and/or distributing fluid milk within the said Los Angeles sales area and the above provisions of said purported License apply, according to their terms, to each of the plaintiffs in the conduct of their said business.

XXI.

Each of the plaintiffs herein purchases and/or produces all of the milk used by it in the conduct of its business entirely and exclusively within the State of California, and also sells and distributes milk produced or purchased by it entirely within said state, and none of said milk is moved or shipped outside the State of California. None of the milk produced and/or purchased

and/or sold and/or distributed by any one of the four plaintiffs herein is in, or ever enters into, the current of interstate and/or foreign commerce, but is and remains at all times entirely within the current of purely intra-state commerce.

XXII.

Said defendant Los Angeles Milk Industry Board and the individual defendants named herein as the members of said Board have demanded of these plaintiffs and each of them that they file with said Board prior to January 5, 1934, a statement as required by said purported License and set forth in Paragraph X, *supra*.

XXIII.

Said defendant Los Angeles Milk Industry Board, and said defendants hereinbefore named as acting as members thereof, have demanded of these plaintiffs, and each of them, that they, and each of them, deduct from the amount payable to each producer from whom each of said plaintiffs, as a distributor, purchased milk during the time commencing November 20, 1933, and ending November 30, 1933, both dates inclusive, and pay to said Board certain sums equaling in amount one-quarter cent for each pound of butter fat contained in the milk purchased by each of said plaintiffs as a distributor, and in cases where one or more of the plaintiffs are distributors having production of their own, have demanded of said plaintiffs that they deduct a like amount for each pound of butter fat contained in milk produced and sold by them during said period and pay the same to the Los Angeles Milk Industry Board; said defendants have also demanded of plaintiffs, and each of them, that whether they have production of their own

or not they pay, as distributors, to said Los Angeles Milk Industry Board sums equaling an additional amount of one-quarter cent for each pound of butter fat contained in the milk distributed by each of said plaintiffs during said period; said defendants will, unless restrained by this Court, each month make similar demands upon these plaintiffs, and each of them, demanding that plaintiffs, and each of them, deduct from the amounts payable to producers from whom they purchase milk and pay to said board sums equaling in amount one-quarter cent for each pound of butter fat contained in the milk so purchased by each of said plaintiffs and a like amount of one-quarter cent for each pound of butter fat contained in milk produced by them and an additional amount of one-quarter cent per pound of butter fat contained in all milk distributed by them. Said demands are and will be made under and by virtue of the provisions of Section III, paragraph 4 (b) of said purported License, a copy of which is hereunto annexed and marked Exhibit "A."

XXIV.

Said defendant Los Angeles Milk Industry Board and said defendants hereinbefore named as acting as members thereof have demanded of these plaintiffs, and each of them, that they, and each of them, deduct from the amount payable to each producer for whom each of said plaintiffs, as a distributor, purchased milk during the time commencing November 20, 1933, and ending November 30, 1933, both dates inclusive, and pay to said board an amount for each pound of butter fat contained in milk purchased from each of the producers who sell to said plaintiffs, equal to the average amount

which the members of the several associations or organizations of milk producers named in said purported License, are now authorizing their distributors to pay over to such associations or organizations on behalf of their respective members and that similar payments be made by plaintiffs having production of their own. That none of the producers from whom plaintiffs are so purchasing milk is a member of any of said associations or organizations. The specific amount which said defendants have demanded of these plaintiffs under this head for the period above mentioned is eight-tenths of a cent for each pound of butter fat contained in the milk so purchased and/or produced. Said defendants will, unless restrained by this Court, each month make similar demands upon these plaintiffs, and each of them, demanding that plaintiffs, and each of them, deduct from the amounts payable to producers from whom they purchased milk and pay to said board an amount equal to the average which the members of said associations or organizations are then authorizing their distributors to pay over to such associations or organizations on behalf of their respective members and demanding that similar payments be made by plaintiffs having production of their own. Said demands are and will be made under and by virtue of the provisions of Section III, paragraph 4 (c) of said purported License, a copy of which is hereunto annexed and marked Exhibit "A."

XXV.

Said defendant Los Angeles Milk Industry Board and said defendants hereinbefore named as acting as members thereof and said defendant Milk Producers, Inc., have demanded of these plaintiffs, and each of them,

that they, and each of them, deduct from the amount payable to each producer from whom each of said plaintiffs, as a distributor, purchased milk during the time commencing November 20, 1933, and ending November 30, 1933, both dates inclusive, and pay over to said defendants certain specified amounts of money calculated as provided in Section III, paragraphs 5 (a), (b), and (c) of said purported License, a copy of which is hereunto annexed and marked Exhibit "A," and have demanded that similar payments be made by plaintiffs having production of their own. That for said period said Board has determined said amount to be 29 cents per pound of butter fat, being the difference between the base price of 51 cents per pound and the surplus price of 22 cents per pound of butter fat. Said defendant will, unless restrained by this Court, each month make similar demands upon these plaintiffs, and each of them, demanding that plaintiffs, and each of them, deduct from the amounts payable to producers from whom they purchase milk and pay to said defendants sums calculated by them as provided in said Section III, paragraphs 5 (a), (b), and (c) of said purported License and demanding that similar payments be made by plaintiffs having production of their own. Said demands are and will be made under and by virtue of the provisions of said sections of said purported License.

XXVI.

Said defendants will make similar demands on these plaintiffs each month hereafter for similar payments and will do so under and by color of the said purported License.

XXVII.

On or about the 17th day of November, 1933, the Secretary of Agriculture of the United States signed a so-called marketing agreement for milk in the said Los Angeles Milk Shed, which was also signed by less than one-third of the persons, firms and corporations engaged in the business of producing and/or distributing fluid milk in the said Los Angeles sales area. None of these plaintiffs signed said agreement. Said agreement is referred to in said purported License, Exhibit A. A true copy of said agreement is hereto attached, marked Plaintiffs' Exhibit B, and hereby made a part hereof as fully as if set forth verbatim. Said agreement provides for the selection of a Board to be known as the Los Angeles Milk Industry Board and its provisions in that respect are the same as those of said purported License, Exhibit A, and its provisions in other respects are similar to those of said purported License. Said agreement provides that the duties of said Board shall be to receive complaints as to violations by any contracting producer or contracting distributor of the terms and conditions of said agreement, to adjust disputes arising under said agreement between contracting producers and/or contracting distributors, to make findings of fact which may be published; to issue warnings to said persons and to take such lawful measures as may be appropriate, and if it deems it necessary, to report its findings and action with respect thereto to the Secretary for appropriate proceedings under the Act. Since the issuance of said purported License, said defendant Board and said defendant members thereof, and said defendant Berdie are interpreting said purported License to mean that the

provisions of said agreement, Exhibit "B," and particularly the provisions thereof providing for the duties of said Board and conferring powers thereon, are incorporated into and made a part of said purported License and are assuming the duties and exercising the powers just above mentioned and will, unless restrained by order of this Court, continue so to do and in particular will assume said powers and exercise said duties in relation to these plaintiffs as hereinafter set forth in detail. Since the issuance of said license, said Board is assuming the duties and exercising the powers just above mentioned and will, unless restrained by order of this court, continue to do so, and in particular will assume said powers and exercise said duties in relation to these plaintiffs as hereinafter set forth in detail.

XXVIII.

Upon failure of these plaintiffs to make to said defendants the payments unlawfully demanded and to be demanded by them as aforesaid, and to comply with other unlawful and vexatious demands of defendants, said defendants intend to and will, unless restrained by order of this Court, summon plaintiffs before them to answer to a charge of violating said purported License, and conducting business in violation thereof, and will thereupon find the plaintiffs to be guilty of violating said purported License, and will report such finding to the Secretary of Agriculture, and will advise and recommend that said purported License be revoked and cancelled so far as these plaintiffs are concerned, and that, if they continue to do business thereafter, they be proceeded against under said National Agricultural Adjustment Act for engaging in the business of distributing milk without a license.

XXIX.

That said defendant, Harry W. Berdie, as such Regional Representative, as hereinbefore set forth, has threatened and is threatening to institute proceedings before the said Secretary of Agriculture, for the cancelling of the license and rights of these plaintiffs herein to handle their individual businesses under said National Agricultural Adjustment Act. That although plaintiffs herein are not parties signatory to that certain marketing agreement entered into by the Secretary of Agriculture of the United States on or about the 17th day of November, 1933, with certain contracting producers of fluid milk produced in the Los Angeles Milk Shed and/or the Los Angeles Cream Shed, and with certain contracting distributors of fluid milk in the Los Angeles sales area, nevertheless, the said Harry W. Berdie is attempting to enforce and will enforce, unless restrained by proper order of this Court, the terms and provisions of said marketing agreement as against these plaintiffs, and has threatened to and will, unless restrained by proper order of this Court, revoke the licenses of these plaintiffs to continue in their businesses.

XXX.

Under the provisions of said National Agricultural Adjustment Act, the doing of business without a license is punishable by penalty of \$1,000.00 per day. Said penalty is so unusually oppressive and unreasonable that the said plaintiffs are thereby precluded from the privilege of asserting their rights independently and challenging in the courts by defensive tactics, the validity of said purported license, and the provisions of the statute pursuant to which it purports to have been issued, without

incurring the risk of being visited with such oppressive and unreasonable penalties, that plaintiffs have no speedy and/or adequate remedy at law; and the injury to plaintiff's rights will be irreparable unless this Court shall exercise its equitable jurisdiction to issue an injunction. Moreover, the interference by said defendants with plaintiffs' business unless restrained by order of this Court will be continuous, to the great and irreparable injury of plaintiffs. Said penalties imposed by said Act, which are contended and believed by plaintiffs to be not legal, are so excessive as to intimidate plaintiffs by the risk of having to pay the amount thereof, and since the ordinary method of testing the validity of said Act and purported license would subject the plaintiffs to the risk of said enormous penalties, if in error, said purported license and act deprive plaintiffs of their property without *due* process of law, contrary to the Fifth Amendment to the Constitution of the United States, and plaintiffs are without remedy except in this court of equity.

XXXI.

Plaintiffs respectfully show the Court that the said purported license and the said National Agricultural Adjustment Act, in so far as it purports to authorize said purported license, are, and each of them is, void under the Constitution and laws of the United States for the following reasons, and in the following respects:

(a) Because said license constitutes an unlawful and unwarranted interference with the right of these plaintiffs to contract with the producers.

(b) Because the issuance of said license constitutes an unlawful assumption and usurpation of legislative power by the Secretary of Agriculture.

(c) Because said purported license is an attempt to impose a charge upon one individual for the benefit of other private individuals, corporations or enterprises.

(d) Because said purported license recites and finds contrary to fact that the marketing of milk in said territory designated therein as the Los Angeles Sales Area, is in the current of interstate commerce and inextricably mingled with it.

(e) Because said purported license is an attempt to regulate the business of production and sale of fluid milk and does not in any way constitute a regulation of interstate commerce.

(f) Because said purported license is an attempt to regulate purely intra-state business by Federal authorities, under the guise of regulating interstate and foreign commerce.

(g) Because said purported license is an attempt by Federal authorities to fix commodity prices to producers, distributors and consumers in the course of conducting a business which is not burdened with a public interest or duty and which is not subject to price regulation by Federal authorities or otherwise.

(h) Because said purported license deprives these plaintiffs of their property without due process of law, in violation of plaintiffs' rights, and particularly of the Fifth Amendment to the Constitution of the United States.

(i) Because said purported license and marketing agreement attempts to fix and levy an arbitrary charge to be paid to a private corporation in which plaintiffs are not members or stockholders, without any legislative authority and contrary to the provisions of Section

VIII of Article 1 of the Constitution of the United States.

(j) Because said National Agricultural Adjustment Act, in so far as it attempts to confer upon the Secretary of Agriculture the power to issue licenses and to thereby fix such terms and conditions as may be necessary to eliminate unfair practices or charges that prevent or tend to prevent the effectuation of the declared policy, and the restoration of normal economic conditions in the marketing of such commodities or products thereof and the financing thereof, is an unlawful and unconstitutional delegation of legislative authority to an executive officer, and violates Article I of the Constitution of the United States.

(k) Because said license as issued by said Secretary of Agriculture is not authorized by said National Agricultural Adjustment Act.

XXXII.

Plaintiffs respectfully show the Court that the acts and threatened acts of the defendants above set forth are in violation of the Constitution and laws of the United States and the rights of the plaintiffs thereunder in the respects and for the reasons set forth in Paragraph XXIX, *supra*.

XXXIII.

Plaintiffs further show that even if the Court should hold that said purported license and Act were valid, so far as the regulation of the marketing of milk in interstate commerce is concerned, nevertheless both said purported license and Act, and the acts and threatened acts of defendants herein set forth, are invalid as to these plaintiffs, for the reason that they are not engaged

in the marketing of milk for distribution in interstate commerce, as is above more particularly set forth.

WHEREFORE, plaintiffs pray that, in view of the irreparable injury which is about to be inflicted upon plaintiffs, and the multiplicity of penalty suits to which plaintiffs will be subjected but for the restraining process of this Court, a restraining order at once issue, enjoining the defendants and each of them from making any of the demands and committing any of the acts with relation to these plaintiffs, above mentioned, and from taking any steps whatsoever to collect from the plaintiffs the payments above mentioned, and ordering said defendants to show cause why a temporary injunction of like character should not issue, that upon the hearing of said order to show cause a temporary injunction of like character issue and that upon final hearing said temporary injunction be made permanent.

Plaintiffs further pray that this Court adjudge and decree that said purported license is void and invalid as to these plaintiffs.

Plaintiffs pray for their costs incurred herein and for all such other and further relief as in equity they may be entitled to.

LEWIS D. COLLINGS,
AMOS FRIEDMAN,
WALTER F. HAAS,
HAROLD C. JOHNSTON,
EDWARD M. SELBY,
WILLIAM T. SELBY,
Attorneys for Plaintiffs.

(As per Order herein, a printed pamphlet containing Exhibits A and B is inserted herein, as follows:)

UNITED STATES
DEPARTMENT OF AGRICULTURE
AGRICULTURAL ADJUSTMENT ADMINISTRATION

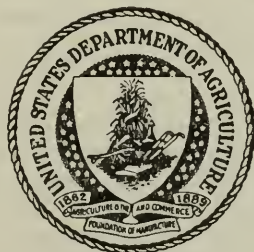
MARKETING AGREEMENT SERIES—AGREEMENT NO. 23
LICENSE SERIES—LICENSE NO. 17

MARKETING AGREEMENT AND LICENSE
FOR MILK—

LOS ANGELES MILK SHED

Agreement approved and executed by the Secretary of Agriculture
November 16, 1933. Effective 12:01 a.m., eastern standard time
November 17, 1933

License issued by the Secretary of Agriculture
November 16, 1933. Effective 12:01 a.m., eastern standard time
November 20, 1933



UNITED STATES
GOVERNMENT PRINTING OFFICE
WASHINGTON : 1933

along the southern boundary line of Riverside County to a point where it intersects the eastern boundary line of Orange County; thence southwesterly along the eastern boundary line of Orange County to a point where said eastern boundary line intersects on the Pacific Coast; thence in a northwesterly direction along the Pacific Coast with its meanderings to the point of beginning; and also including the island of Santa Catalina.

E. "Los Angeles Cream Shed" means those dairy farms located in the counties of Imperial, San Luis Obispo, Tulare, Kings, Madera, Ventura, Merced, Kern, Fresno, and Santa Barbara as were producing milk for Grade A market cream on the effective date of this Agreement, and such other dairy farms as may become entitled to produce milk for Grade A market cream, in accordance with the terms of this Agreement; except (1) Those dairy farms producing any milk for distribution as fluid milk in said counties, and (2) Those farms located in said counties which are within the Los Angeles Milk Shed as defined herein.

F. "Los Angeles Milk Shed" means those dairy farms in the counties of Los Angeles, Riverside, San Bernardino, and Orange, and also those dairy farms outside said counties as were producing milk for Grade A market milk on the effective date of this agreement, and such other dairy farms as may become entitled to produce milk for Grade A market milk, in accordance with the terms of this Agreement.

G. "Los Angeles Milk Industry Board" is that Board to be organized and to have the powers and duties set forth in Exhibit D, which is attached hereto and made a part hereof.

H. "Los Angeles Cream Clearing Association" means that association (or any corporate successor thereto) composed of contracting distributors who are operating separating plants in the Los Angeles Cream Shed, and supplying Grade A market cream.

I. "Secretary" means the Secretary of Agriculture of the United States.

J. "Act" means the Agricultural Adjustment Act, approved May 12, 1933, as amended.

K. "Person" means, individual, partnership, corporation, association, and any other business unit.

The parties to this Agreement are the contracting producers, the contracting distributors, and the Secretary.

Whereas, it is the declared policy of Congress, as set forth in Section 2 of the Agricultural Adjustment Act, approved May 12, 1933, as amended—

(1) to establish and maintain such balance between the production and consumption of agricultural commodities and such marketing conditions therefor, as will reestablish prices to farmers at a level that will give agricultural commodities a purchasing power with respect to articles that farmers buy, equivalent to the purchasing power of agricultural commodities in the base period; the base period in the case of all agricultural commodities except tobacco being the prewar period, August 1909–July 1914, and in the case of tobacco, the base period being the postwar period, August 1919–July 1929;

(2) to approach such equality of purchasing power by gradual correction of the present inequalities therein at as rapid a rate as is deemed feasible in view of the current consumptive demand in domestic and foreign markets; and

(3) to protect the consumers' interest by readjusting farm production at such level as will not increase the percentage of the consumers' retail expenditures for agricultural commodities, or products derived therefrom which is returned to the farmer, above the percentage which was returned to the farmer in the pre-war period August 1909-July 1914; and

Whereas, it is understood that to effectuate such declared policy, the contracting producers shall receive a fair proportion of the financial benefits resulting to the contracting distributors from this Marketing Agreement for Milk, Los Angeles Milk Shed, and acts done pursuant thereto until parity is achieved for the contracting producers, and that subject to the foregoing, at all times, efforts will be made by the contracting distributors to yield to the consumers a fair proportion of such financial benefits and savings; and

Whereas, pursuant to the Act, the parties hereto for the purpose of correcting the conditions now obtaining in the marketing of milk produced in the Los Angeles Milk Shed and/or the Los Angeles Cream Shed and in the marketing of fluid milk distributed in the Los Angeles Sales Area, desire to enter into a marketing agreement under the provisions of Section 8 (2) of the Act; and

Whereas, associations of producers, members of Producers' Arbitration Committee, Inc., and individual producers, parties signatory hereto, market more than eighty percent (80%) of the milk produced in the Los Angeles Milk Shed and/or the Los Angeles Cream Shed and distributed and consumed as fluid milk in the Los Angeles Sales Area and such associations of producers severally represent that they have corporate power and authority to enter into this Agreement; and

Whereas, members of the Southern California Milk Dealers Association and other distributors, parties signatory hereto, distribute more than eighty percent (80%) of the fluid milk distributed in the Los Angeles Sales Area, which fluid milk comprises substantially all of the milk marketed by the associations of producers, members of the Producers' Arbitration Committee, Inc., as aforesaid; and

Whereas, the marketing of milk produced in the Los Angeles Milk Shed and the Los Angeles Cream Shed, respectively, for distribution as fluid milk in the Los Angeles Sales Area is inextricably intermingled with the marketing of milk produced for manufacturing into butter and other products manufactured from milk and cream; and

Whereas, the prices received by the contracting producers from the contracting distributors and the prices properly receivable by the contracting distributors from consumers are dependent upon the prices of butter and other products made from milk produced by the contracting producers and others within and without the State of California; and

Whereas, the marketing of milk produced in the Los Angeles Milk Shed and the Los Angeles Cream Shed for distribution as fluid milk in the Los Angeles Sales Area and the distribution of said fluid milk are in both the current of interstate and foreign commerce and the current of interstate commerce which are inextricably intermingled;

Now, therefore, the parties hereto agree as follows:

1. The schedules governing the prices at which, and the terms and conditions under which milk shall be sold by the contracting producers and purchased by the contracting distributors for distribution as fluid milk shall be those set forth in Exhibit A, which is attached hereto

and made a part hereof. Such schedules or any of them may be changed by agreement between the contracting producers and the contracting distributors, provided, however, that such changes shall become effective only upon the written approval of the Secretary.

Payments to the Producers' Arbitration Committee, Inc., made pursuant to paragraph 5, and payments to the Los Angeles Milk Industry Board, made pursuant to paragraph 4 hereof, and like payments to the Producers' Arbitration Committee, Inc., made pursuant to membership agreements, shall, respectively, be deemed part of the price paid to producers.

2. The schedules of wholesale, resale, and retail prices at which fluid milk shall be distributed and sold by the contracting distributors in the various parts of the Los Angeles Sales area shall be those set forth in Exhibit B. Such schedules or any of them may be changed by agreement between the contracting producers and the contracting distributors, provided, however, that such change shall become effective only upon the written approval of the Secretary.

3. The Production and Surplus Control Plan, attached hereto and made a part hereof, and marked "Exhibit C", shall be binding upon the contracting producers and the contracting distributors. Such Production and Surplus Control Plan may be changed by agreement between the contracting producers and the contracting distributors, provided, however, that such changes shall become effective only upon the written approval of the Secretary.

4. (a) Each contracting distributor agrees to file prior to the 5th day of each month with the Chairman of the Los Angeles Milk Industry Board a statement of (a) the quantity of milk purchased from each producer and (b) as to the production of such contracting distributor a statement of the quantities produced and sold as fluid milk.

(b) The contracting distributors agree that they will not purchase milk from any producer for distribution as Grade A Market Milk, unless such producer authorizes the purchasing contracting distributor to pay over to the Los Angeles Milk Industry Board such amount as may be determined by the Los Angeles Milk Industry Board, provided, however, that such amount shall not exceed $\frac{1}{4}\text{¢}$ for each pound of butterfat contained in the milk purchased by such contracting distributor. Contracting distributors having production of their own, agree to deduct a like amount for each pound of butterfat contained in milk produced and sold by them and to pay the same to the Los Angeles Milk Industry Board. All contracting distributors, whether such distributors have production of their own or not, agree to pay to the aforesaid Los Angeles Milk Industry Board as distributors an amount equal to that paid or deducted by them, as the case may be, as aforesaid. The Board shall use said funds for the purposes specified in Exhibit D, which is attached hereto and made a part hereof.

(c) The contracting distributors agree that they will not purchase milk for distribution as Grade A Market Milk from producers not members of the California Milk Producers Association, Independent Milk Producers Association, the Los Angeles County Natural Milk Producers Association, the Los Angeles Mutual Dairymen's Association, the Southern California Bottled Raw Milk Association, the Dairymen's Association, Inc., of Riverside, or the Orange County

Milk Producers, Inc., unless such producers authorize the purchasing contracting distributor to pay over to the Los Angeles Milk Industry Board an amount, for each pound of butterfat contained in milk purchased from said independent nonmember producers, equal to the average amount which the members of such associations are then authorizing the contracting distributors to pay over to such associations on behalf of their respective members, provided, however, that such deduction shall in no event exceed one cent per pound of butterfat. Contracting distributors having production of their own of milk for distribution as Grade A Market Milk and who are not members of the aforesaid associations of producers agree that for the purposes of this paragraph, they shall be deemed to have sold such milk as a producer and purchased such milk as a distributor and shall make payment to the Los Angeles Milk Industry Board accordingly.

Said average amount shall be determined for each month by the Los Angeles Milk Industry Board by (1) multiplying the amount per pound of butterfat authorized to be deducted in respect to each such Association by the number of pounds for which the deduction is so authorized, (2) adding the several amounts thus arrived at, and (3) dividing the resulting sum by the total number of pounds for which members of said Associations of Producers have in the aggregate authorized deductions, the resulting figure being the average amount to be deducted for said month in the case of such nonmember producers.

The sum so paid shall be kept as a separate fund by said Los Angeles Milk Industry Board for the purpose of securing to said producers not members of the above-mentioned producers' associations, advertising, educational, credit loss, and other benefits similar to those which are secured by the members of the aforesaid producers' associations by virtue of their like payments to said producers' associations. The contracting producers and contracting distributors undertake that said Los Angeles Milk Industry Board shall disburse such funds for the purposes hereinabove provided, and that said Los Angeles Milk Industry Board shall keep separate books and records in a form satisfactory to the Secretary pertaining to such funds, which said books and records of the Los Angeles Milk Industry Board shall be subject to examination of the Secretary during the usual hours of business, and that the Los Angeles Milk Industry Board shall from time to time furnish to the Secretary such information as the Secretary may require.

(d) The deductions which are thus made, pursuant to paragraphs 4 (b) and (c) shall be paid to the Los Angeles Milk Industry Board at the time provided in this Agreement for making payment to producers for milk purchased.

5. (a) The contracting distributors agree that they will not purchase milk for distribution as Grade A Market Milk from any producer who is not a member of any of the associations of producers listed in Paragraph 4 unless such producer authorizes the contracting distributor to whom such producer is delivering milk to deduct or cause to be deducted by the particular association of producers of which any such producer is a member, each month, the following: (1) For the deliveries of such producer in excess of such part thereof as was classified as base milk pursuant to the provisions of Exhibit C for such

month, a sum equal to the difference between the base price for said milk and the surplus price for said milk, both prices to be determined pursuant to the provisions of Exhibit A, Schedule I, and of Exhibit A, Schedule III; and (2) for that part of the deliveries of each such producer not in excess of the producer's base determined pursuant to the provisions of Exhibit C, the difference between the base price payable for said milk pursuant to the provisions of the aforesaid schedules of Exhibit A and the adjusted base price determined according to the provisions of the said schedules of Exhibit A and the provisions of Exhibit C. Every month such contracting distributor or every such association of producers agree to pay the said sums so deducted to the Producers' Arbitration Committee, Inc., as provided in Exhibit C, for the purpose of equitably allocating the loss involved in handling surplus milk.

(b) The contracting distributors agree that they will not purchase milk for distribution as Grade A Market Milk from any producer who is not a member of any of the associations of producers listed in Paragraph 4 unless such producer authorizes the contracting distributor to whom such producer is delivering milk to deduct, each month, the following: (1) For the deliveries of such producer in excess of such part thereof as was classified as base milk pursuant to the provisions of Exhibit C for such month, a sum equal to the difference between the base price for said milk and the surplus price for said milk, both prices to be determined pursuant to the provisions of Exhibit A, Schedule I, and of Exhibit A, Schedule III; and (2) for that part of the deliveries of each such producer not in excess of the producer's base determined pursuant to the provisions of Exhibit C, the difference between the base price payable for said milk pursuant to the provisions of the aforesaid schedules of Exhibit A and the adjusted base price determined according to the provisions of said schedules of Exhibit A and the provisions of Exhibit C. Every such contracting distributor agrees to pay the said sums so deducted to the Producers' Arbitration Committee, Inc., as provided in Exhibit C, for the purpose of equitably allocating the loss involved in handling surplus milk.

(c) Each contracting distributor having production of his own of milk for distribution as Grade A Market Milk agrees to pay each month the following sums to the Producers' Arbitration Committee, Inc., as provided in Exhibit C for the purpose of equitably allocating the loss of handling surplus milk: (1) For such production of such distributor in excess of such part thereof as was classified as base milk pursuant to the provisions of Exhibit C for such month, a sum equal to the difference between the base price of said milk and the surplus price of said milk, both prices to be determined pursuant to the provisions of Exhibit A, Schedule III; and (2) for that part of the production of each such distributor not in excess of the base determined pursuant to the provisions of Exhibit C, the difference between the base price payable for said milk pursuant to the provisions of the adjusted schedules of Exhibit A and the adjusted base price determined according to the provisions of the said schedules of Exhibit A and the provisions of Exhibit C.

6. The contracting producers and the contracting distributors hereby agree that they will abide by the Cream Buying Plan, which is attached hereto as Exhibit F and made a part hereof.

7. The contracting producers and the contracting distributors hereby agree that they will abide by the Rules of Fair Practices, which are attached hereto as Exhibit E and made a part hereof.

8. All contracting producers, not members of any of the above-mentioned producers' associations, shall be permitted to become members of any one of such producers' associations on an equal basis with existing members similarly circumstanced.

9. The contracting parties shall severally maintain systems of account which accurately reflect the true account and condition of their respective businesses. Their respective books and records shall during usual hours of business be subject to the examination of the Secretary to assist him in the furtherance of his duties with respect to this agreement. The contracting parties shall severally, from time to time, furnish such information to the Secretary as the Secretary may request, including information on and in accordance with forms to be supplied by him. All information obtained by or furnished to the Secretary pursuant to this paragraph shall remain the confidential information of the Secretary, and shall not be disclosed by him except upon lawful demand made by the President, or by either House of Congress, or any committee thereof, or by any court of competent jurisdiction. The Secretary, however, may combine and publish the information obtained from contracting producers and/or contracting distributors in the form of general statistical studies or data. The Secretary hereby agrees to issue regulations and prescribe penalties to be imposed in the event of any violation of the confidences or trust imposed hereby.

10. The standards governing the production, receiving, transportation, processing, bottling, and distribution of fluid milk, sold or distributed in the Los Angeles Sales Area shall be those established by the State, County, and City health ordinances and regulations, of any of the municipalities in which said milk is sold, and in addition such other requirements, not conflicting with such ordinances and regulations, as may from time to time be established by the Los Angeles Milk Industry Board, with the approval of the Secretary, and also in the case of milk purchased for distribution as Grade A Market Cream those which are set forth in Exhibit F of this Agreement.

11. This agreement shall become effective at such time as the Secretary may declare above his signature attached hereto, and this agreement shall continue in force until the last day of the month following the aforesaid effective date, and thereafter from month to month, except that:

(a) The Secretary may at any time terminate this agreement by giving notice by means of a press release or in any other manner which the Secretary may determine.

(b) The Secretary may, for good cause shown, at any time terminate this agreement as to any party signatory hereto, by giving notice in writing by registered mail and addressed to such party at the address of such party on file with the Secretary.

(c) The Secretary shall terminate this agreement upon the request of 75% of the Contracting Producers or 75% of the Contracting Distributors, such percentages to be measured by the volume of milk marketed or distributed respectively, by giving notice in the same manner as provided in subdivision (a) above.

(d) This agreement shall in any event terminate whenever the provisions of the Act authorizing it shall cease to be in effect.

12. The benefits, privileges, and immunities conferred by virtue of this Agreement shall cease upon its termination except with respect to acts done prior thereto, and the benefits, privileges, and immunities conferred by virtue of this Agreement upon any party signatory hereto shall cease upon its termination as to such party except as to acts done prior thereto.

13. The contracting producers and contracting distributors shall use their best efforts to assure the observance of the terms and conditions of this Agreement by such producers and distributors. Subject to such regulations as the Secretary may prescribe, the contracting producers and contracting distributors do hereby establish the Los Angeles Milk Industry Board, and do charge such Board, or such additional agencies as it may deem necessary, with the following duties, in addition to those specifically set forth elsewhere in this Agreement, (a) receive complaints as to violations by any contracting producer or contracting distributor of the terms or conditions of this Agreement, (b) adjust disputes arising under this Agreement between contracting producers and/or contracting distributors, (c) make findings of fact which may be published, (d) issue warnings to such persons, and (e) take such lawful measures as may be appropriate; such agency or agencies if it or they deem it necessary, shall report its or their findings and action with respect thereto to the Secretary for appropriate proceedings under the Act.

The findings and/or decisions of the Los Angeles Milk Industry Board on disputes referred to such Board shall be conclusive upon the contracting producers and the contracting distributors.

14. This Agreement may be executed in multiple counterparts which, when signed by the Secretary, shall constitute, taken together, one and the same instrument as if all such signatures were contained in one original.

15. After this Agreement first takes effect, any producer or association of producers of milk in the Los Angeles Milk Shed or in the Los Angeles Cream Shed, or any distributor of fluid milk may become a party to this Agreement, if a counterpart thereof is executed by him and by the Secretary. The Agreement shall take effect as to such producer or distributor at such time as the Secretary may declare above his signature attached to such counterpart, and the benefits, privileges, and immunities conferred by this Agreement shall then be effective as to such producer or distributor.

16. The contracting distributors hereby apply for and consent to licensing by the Secretary subject to Milk Regulations, Series 1, and General Regulations, Series 3, of the Agricultural Adjustment Administration, together with the Amendments thereto prescribed by the Secretary and approved by the President, and subject to terms and conditions not inconsistent with the purpose and effect of this Agreement and not otherwise.

17. Nothing herein contained shall be construed in derogation of the rights of the Secretary to exercise any powers granted him by the Act and, in accordance with such powers, to act in the premises whenever he shall deem it advisable.

18. The contracting distributors agree that they will purchase all of their milk requirements of Grade A Market Milk and Grade A Milk for standardization purposes (provided such milk meets all the health requirements provided for in this Agreement and

provided such milk is produced by producers who have established bases) from producers in the Los Angeles Milk Shed. Producers' Arbitration Committee agrees that it will purchase and pay contracting producers of Grade A Market Milk for all such milk which is delivered to its surplus plant (provided such milk meets all the health requirements provided for in this Agreement and provided such milk is produced by producers who have established bases). The contracting distributors agree that they will purchase all of their milk requirements of Grade A Market Cream from Grade A milk producers in the Los Angeles Cream Shed (provided such milk meets all the health requirements provided for in this Agreement).

19. The Secretary may name any person to act as his agent in connection with any of the provisions contained herein to be performed by the Secretary.

In witness whereof, the contracting producers and the contracting distributors, acting under the provisions of the Agricultural Adjustment Act, for the purpose and within the limitations herein contained, and not otherwise, have hereunto set their respective hands and seals.

Independent Milk Producers Association, by Wm. McComie, vice president, David P. Howells, secretary; Milk Producers, Inc., by F. F. Pellissier, president, O. W. Strodthoff, assistant secretary; Knudsen Creamery Co., Visalia Producers Group, by D. J. Toomey, Bernard Goodreau, J. W. Schroepfer; Golden State Company, Tulare Producers Group, by L. E. Robertson, L. R. Amual; Adohr Milk Farms, Tulare Producers Group, by Manuel Rocha, John W. Sturgeon, Joe S. Simas; Western Dairy Products, Tipton Producers Group, by Dan Freitas, M. V. Cardoza; Peacock Dairies, Inc., by A. S. Goode, president; Los Angeles Mutual Dairymen, by Ray King, president; Dairymen's Cooperative Creamery Association, by Joe N. Gill, president, W. J. Higdon, secretary; Southern California Bottled Raw Milk Association, by S. F. Fanning, president, W. P. Blodgett, secretary; Los Angeles County Natural Milk Association, by A. F. Holt, president, F. B. Carpenter, secretary; Western Consumers Feed Company, by Gail M. McDowell, president, E. M. Sheller, secretary; Star Hay Company, by Gail M. McDowell, president, W. E. Kinsey, secretary; Roger Jessup Certified Farm, by Roger Jessup; California Milk Producers Association, by T. M. Erwin, president, Nels Lautrup, assistant secretary; Orange County Milk Producers, Inc., by R. F. Hazard, vice president, C. H. Christie, secretary; Colnbrook Creamery Corporation, by F. E. Voorhees, president, H. O. Smith, secretary; Mayfair Creamery, by Earl Brunner; Jersey Cream Supply Company, by M. I. Alfred; Guaranteed Dairy, by E. A. Wakeham; Wilsey Dairy, by L. T. Wilsey; Pomegranate Dairy, by Robert H. Easton; Orangehurst Dairy, by David Giddings; Yellis Dairy, by Elmer Byers; Raitts Rich

Milk, by J. T. Raitt, president, W. H. Kuhn, secretary; Cedar Crest Dairy, by O. D. Thomas; Wilson's Dairy, by Harry W. Wilson; C. M. Hill Dairy, by C. M. Hill; Excelsior Creamery Company, by W. D. Ranney, president, D. G. Tidball, secretary; Blue Ribbon Dairy, by H. K. McIlvain; Southland Dairies, Ltd., by R. L. Anderson, president; Crown City Dairy Company, by A. G. Marcus, president, D. A. Mareus, secretary; Hollenbeck Dairy Farms, by Pierre Vahore; Southwestern Dairy Company, by Lee B. Bevier, R. E. Love; Fosselman Creamery Company, by H. R. Orme, C. V. Ringhoff; East Los Angeles Dairy, by F. C. Wahrman; Airway Dairy, by S. S. Duntley; Santa Monica Dairy Company, by H. Michel, president, Clarence A. Michel, secretary; Milk Distributors Association, by O. Moeck, president, Burt B. Corliss, secretary; Harbor Creameries, Inc., by C. T. Fitzhugh, president; Watson Dairy Products Company, by Paul A. Watson; Whittier Sanitary Dairy Company, by M. C. Lautrup, president, H. M. Butts; Cloverdale Creamery Company, by Wm. L. Houghton, president, G. A. Cameron, secretary; Dairymen's Association, Inc., by R. C. Gerber, president, E. L. Vehlow, secretary; Santa Rita Dairy Company, by R. D. Weaver; Mount View Dairy, by J. W. Bartlett; Lakeview Creamery Company, by C. M. Gregory, president, S. Y. Allen, secretary; Pellissier Dairy Farms, by Frank L. Pellissier; Lakeview Dairy Farms, by B. C. Decker; Peoples Milk Company, by J. M. Sparks; Hollow Hill Dairy, by T. H. Brice, owner; Model Farms, Ltd., by John S. Grady, president, Louis Burke, secretary; Western Dairy Products, Inc., by K. L. Carver, vice president, J. F. Holt, assistant secretary; Challenge Cream & Butter Association, by W. J. Higdon, president, C. L. Mitchell, secretary; Danish Creamery Association, by W. F. McMaster, president, Ed R. Hamner, secretary.

Whereas, it is provided by Section 8 of the Agricultural Adjustment Act approved May 12, 1933, as amended, as follows:

SEC. 8. In order to effectuate the declared policy, the Secretary of Agriculture shall have power—

To enter into marketing agreements with processors, associations of producers, and others engaged in the handling, in the current of interstate or foreign commerce of any agricultural commodity or product thereof, after due notice and opportunity for hearing to interested parties. The making of any such agreement shall not be held to be in violation of any of the antitrust laws of the United States, and any such agreement shall be deemed to be lawful: *Provided*, That no such agreement shall remain in force after the termination of this Act.

Whereas, due notice and opportunity for hearing to interested parties has been given pursuant to the provisions of the Act and the regulations issued thereunder, and

Whereas, it appears, after due consideration, that this is a marketing agreement between the Secretary and persons engaged in the handling

of milk and its products within the meaning of said Act in the current of interstate and foreign commerce; and

Whereas, it appears, after due consideration, that the aforesaid Marketing Agreement will tend to effectuate the policy of Congress set forth in Section 2 of the Agricultural Adjustment Act in that such Marketing Agreement will:

(a) Establish and maintain such balance between the production and consumption of milk and such marketing conditions therefor, as will reestablish prices to the producers thereof at a level that will give such agricultural commodity a purchasing power with respect to articles that farmers buy equivalent to the purchasing power of such agricultural commodity in the base period, as defined in Section 2 of said Act; and (b) approach such equality of purchasing power by gradual correction of the present inequalities therein at as rapid a rate as is possible in view of the current consumptive demand in domestic and foreign markets; and

(c) Protect the consumer's interest by retaining the production of such agricultural commodities at such level as will not increase the percentage of the consumers' retail cost for such agricultural commodities or products derived therefrom which was returned to the farmer above the percentage which was returned to the farmer in the pre-war period August 1909-July 1914, and

Whereas, I herewith give notice that—

1. The terms and conditions of this Agreement are agreed to as reasonable in the light of conditions now prevailing in the Los Angeles Sales Area, in the Los Angeles Milk Shed, and/or Los Angeles Cream Shed, and are not to be regarded as a precedent for marketing agreements for other milk sheds or for future marketing agreements for the Los Angeles Sales Area, the Los Angeles Milk Shed, and/or Los Angeles Cream Shed, and

2. The Secretary reserves the privilege of approving a blanket marketing agreement, pursuant to Section 8 (2) of the Act, for all milk sheds, which blanket marketing agreement may make specific modifications for any particular designated milk shed to conform to the conditions then prevailing in such specific milk shed.

Now, therefore, I, Henry A. Wallace, Secretary of Agriculture, acting under the provisions of the Agricultural Adjustment Act for the purposes and within the limitations therein contained, and not otherwise, do hereby execute this agreement under my hand and the official seal of the Department of Agriculture, in the City of Washington, District of Columbia, on this 16th day of November, 1933, and pursuant to the provisions hereof declare this Agreement to be effective on and after November 17, 12:01 A.M. Eastern Standard Time.



H A Wallace

Secretary of Agriculture.

EXHIBIT A

PRICES TO BE PAID PRODUCERS

SCHEDULE I

PRICES FOR GRADE A MARKET MILK DELIVERED IN BULK (EXCEPT MILK DELIVERED TO PLANTS IN THE COUNTIES AND FOR THE PURPOSES SET FORTH IN SCHEDULE II)

(a) The prices (herein termed base prices) to be paid by contracting distributors for Grade A Market Milk, delivered in bulk f.o.b. distributors' processing plants in Los Angeles, shall be determined in accordance with the following schedule, which provides that changes in the Los Angeles market quotations for 92-score butter shall result in a change in the base price to be paid per pound of butterfat, only after a definite discrepancy between the butter quotations and the existing price base appears. Such discrepancy shall be deemed to have appeared whenever such closing market quotation shall have moved into the section next below or next above the existing quotations, as provided in the following schedule, and shall have remained in such section for seven consecutive days. In such event, corresponding revisions in the base price shall be made on the second day next succeeding such seven-day period. Provided, however, that if, in the opinion of the Los Angeles Milk Industry Board a revision in the base price resulting from making Section 1 applicable may not be justified by economic conditions, the Los Angeles Milk Industry Board may postpone such revision for not exceeding ten days following such seven-day period for the purpose of making an economic survey and report to the Secretary. Following such economic survey and report, the Los Angeles Milk Industry Board may, with the approval of the Secretary, further postpone such revision for such time as it may recommend and the Secretary may approve.

	Los Angeles market quotation 92-score butter	Total base price per pound butterfat
Section 1.....	\$0.00 to .20	\$.45
Section 2.....	.201 .25	.51
Section 3.....	.251 .30	.61

(b) The contracting distributors agree that, for the purpose of standardizing milk for market, they will purchase and use only Grade A milk, purchased at the above prices.

(c) The foregoing base prices are payable by contracting distributors in respect of all milk delivered to them, but in accounting for the same they shall—

(1) On all of such deliveries of producers not in excess of such producer's base as determined under the provisions of Exhibit C, pay to each producer the foregoing prices adjusted as provided in Exhibit C, and pay the difference between the base price and the adjusted base price to Producers' Arbitration Committee, Inc., as provided under Paragraphs 5 (a) and 5 (b) of this agreement, except in those cases where the contracting distributor is paying the full base price to any of the associations of producers listed in Paragraph 4 of this agreement and such association of producers is itself paying to Producers' Arbitration Committee, Inc., the difference between the adjusted base price and the base price determined as aforesaid.

(2) On all such deliveries in excess of producer's base determined as aforesaid, pay to each producer the surplus price, as established pursuant to the provisions of this exhibit hereinafter set forth, and pay to the Producers' Arbitration Committee, Inc., the difference between the base price and the surplus price, except in those cases where the contracting distributor is paying the full base price to any of the associations of producers listed in Paragraph 4 of this agreement and such association of producers is itself paying to Producers' Arbitration Committee, Inc., the difference between the base price and the surplus price determined as aforesaid.

(3) Distributors having production of their own shall as to such production pay monthly to Producers' Arbitration Committee, Inc., the difference between the base price and the adjusted base price as provided under Paragraph 5 (c) of this Agreement; and shall on such production in excess of such distributors' base as a producer pay monthly to the Producers' Arbitration Committee, Inc., the difference between the base price and the surplus price.

(d) *Surplus price.*—Milk delivered by producers to contracting distributors in excess of quantities representing the base of each such producer shall be paid for at the surplus price, and distributors having production of their own may retain on account of such production in excess of their established bases as producers the surplus price. The surplus price shall be the monthly average of the daily quotation for ninety-two score butter prevailing on the Los Angeles market during the month in which such milk is to be accounted for.

(e) *Where the milk passes through a country receiving station* the following deductions per pound of butterfat shall be made.

A. The cost of transportation from the country receiving station to Los Angeles according to truck hauling tariff of the California State Railway Commission plus an allowance of four cents (4¢) per pound butterfat for preparation of such shipment.

B. If delivery is taken at the producer's ranch, in addition to the foregoing deduction, the actual reasonable cost of hauling to the country receiving station, not exceeding three cents (3¢) per pound butterfat.

SCHEDULE II

PRICES FOR MILK DELIVERED IN BULK TO PLANTS IN CERTAIN COUNTIES FOR SEPARATION INTO CREAM AND SKIMMED MILK AND/OR FOR PROCESSING INTO BUTTERMILK, CONDENSED MILK, COTTAGE CHEESE, OR SKIMMED MILK POWDER

1. The minimum buying price per pound of butterfat to be paid by the processing plants in the several counties listed below for milk

delivered in bulk for the purposes set forth in the heading of this Schedule II shall be:

(a) The monthly average of the daily quotations in Los Angeles for 92 score butter for the month in which deliveries are made to such plant, plus the premiums which may prevail according to the schedules set forth in paragraphs (b) and (c) below in the several counties listed below when the quotations of Section 1, Section 2, and Section 3, respectively, of Exhibit A and revised base prevail.

	When section 1 prevails	When section 2 prevails	When section 3 prevails
(b) County—			
Merced.....	\$0. 06	\$. 09	\$0. 13
Fresno.....	. 06 $\frac{1}{2}$	. 09 $\frac{1}{2}$	. 13 $\frac{1}{2}$
Tulare.....	. 06 $\frac{3}{4}$	. 09 $\frac{3}{4}$	. 13 $\frac{3}{4}$
Kings.....	. 06 $\frac{3}{4}$	. 09 $\frac{3}{4}$	. 13 $\frac{3}{4}$
Santa Barbara.....	. 06 $\frac{3}{4}$	. 09 $\frac{3}{4}$	. 13 $\frac{3}{4}$
Imperial.....	. 06 $\frac{3}{4}$	. 09 $\frac{3}{4}$	. 13 $\frac{3}{4}$
Kern.....	. 07 $\frac{1}{4}$	. 10 $\frac{1}{4}$	. 14 $\frac{1}{4}$

(c) In addition to the above premiums, add the following premiums for solids-not-fat values. When the average monthly carload price at Los Angeles of Roller Process powdered skim milk, as determined by the Los Angeles Milk Industry Board from available data, is:

- 3 $\frac{1}{4}$ cents per pound, add $\frac{1}{2}$ cent per pound of butterfat
- 3 $\frac{1}{2}$ cents per pound, add 1 cent per pound of butterfat
- 3 $\frac{3}{4}$ cents per pound, add 1 $\frac{1}{2}$ cents per pound of butterfat
- 4 cents per pound, add 2 cents per pound of butterfat
- 4 $\frac{1}{4}$ cents per pound, add 2 $\frac{1}{2}$ cents per pound of butterfat
- 4 $\frac{1}{2}$ cents per pound, add 3 cents per pound of butterfat
- 4 $\frac{3}{4}$ cents per pound, add 3 $\frac{1}{2}$ cents per pound of butterfat
- 5 cents per pound, add 4 cents per pound of butterfat
- 5 $\frac{1}{4}$ cents per pound, add 4 $\frac{1}{2}$ cents per pound of butterfat
- 5 $\frac{1}{2}$ cents per pound, add 5 cents per pound of butterfat
- 5 $\frac{3}{4}$ cents per pound, add 5 $\frac{1}{2}$ cents per pound of butterfat
- 6 cents per pound, add 6 cents per pound of butterfat

2. The foregoing prices shall be subject to the terms and conditions set forth in the Cream Buying Plan which is attached hereto as Exhibit F.

SCHEDULE III

PRICES FOR RAW GRADE A MARKET MILK DELIVERED IN BOTTLES TO CONTRACTING DISTRIBUTORS (EXCEPT TO STORES)

(a) The following schedule of minimum buying prices to be paid to "Contracting Producers" by "Contracting Distributors" (except stores) for bottled Grade A raw milk shall prevail when the conditions set forth in Sections 1, 2, and 3, respectively, of Exhibit A and revised base price prevail:

	Price paid to producers (per quart)
When conditions of Section 1 prevail.....	\$. 05¼
When conditions of Section 2 prevail.....	. 06
When conditions of Section 3 prevail.....	. 06¾

(Milk Industry Board shall as soon as reasonably practicable after the effective date of this Agreement investigate the justifiability of the foregoing prices, and shall within thirty days after the effective date of this Agreement report its findings to the Secretary, together with such recommendations as to the amendment of the Agreement as in its opinion seem desirable. The contracting producers and the contracting distributors agree to abide by the decision of the Secretary in respect to any such amendment.)

(b) Such milk shall be delivered by producers to distributors' city processing plant bottled and iced in cases. Distributors will furnish bottles, cases, and caps.

(c) For the purpose of making the adjustments provided for in this Schedule III and in Exhibit C, the foregoing prices per quart of bottled milk shall be reduced to base prices per pound of butterfat (1) on the basis that each such quart contains milk with 4 percent butterfat content, and (2) so as to eliminate from the said adjustment all extra cost relating to the bottling and handling of the bottle product. Accordingly the base price of such milk shall be determined in the following manner.

(1) Each quart of milk shall be taken to be the equivalent of 0.086 pound of butterfat.

(2) Multiply the total number of quarts delivered by 0.086; the resulting figure will be the number of pounds of butterfat deemed to have been delivered.

(3) The base price per pound of butterfat shall be—

When conditions of Section 1 prevail.....	\$. 45
When conditions of Section 2 prevail.....	. 51
When conditions of Section 3 prevail.....	. 61

(d) The prices set forth in paragraph A are payable by contracting distributors in respect of all milk delivered to them, but in accounting for the same they shall—

(1) On all of the deliveries of such producer not in excess of such producer's base as determined under the provisions of Exhibit C, pay to each producer the difference between the foregoing prices per quart of bottled milk as set forth in paragraph (a) for all quarts delivered and the base price per pound of butterfat as set forth in paragraph (c) for all pounds of butterfat delivered; and pay each producer the base price adjusted as provided in Exhibit C, and pay the difference between the base price and the adjusted base price to Producers' Arbitration Committee, Inc., as provided under Paragraphs 5 (a), 5 (b), and 5 (c) of this agreement, except in those cases where the contracting distributor is paying the full base price to any of the associations of producers listed in paragraph 4 of this agreement and such association of producers is itself paying to Producers' Arbitration Committee, Inc., the difference between the base price and the adjusted base price determined as aforesaid.

(2) On all deliveries in excess of producer's base determined as aforesaid, pay to each producer the difference between the foregoing prices per quart of bottled milk as set forth in paragraph (a) for all quarts delivered and the base price per pound of butterfat as set forth in paragraph (c), for all pounds of butterfat delivered; and pay each producer the surplus price, as established pursuant to the provisions of this exhibit hereinafter set forth, and pay to the Producers' Arbitration Committee, Inc., the difference between the base price and the surplus price, except in those cases where the contracting distributor is paying the full base price to any of the associations of producers listed in paragraph 4 of this agreement and such association of producers is itself paying to Producers' Arbitration Committee, Inc., the difference between the base price and the surplus price determined as aforesaid.

Surplus price.—Milk delivered by producers to contracting distributors in excess of quantities representing the base of each such producer shall be paid for at a surplus price to be established as follows:

The surplus price shall be the monthly average of the daily quotation for 92 score butter prevailing on the Los Angeles Market for the month in which deliveries by producers have been made.

EXHIBIT B

SELLING PRICES

1. *General provisions applicable to all schedules of the exhibit.*—The minimum prices set forth in the following schedules are based on milk containing an average butterfat content of 4%, subject to a tolerance for normal fluctuations of 0.2 of one percent up or down for any 30-day period.

2. Any distributor, who, during any 30-day period, has sold milk in bulk or bottles averaging a butterfat content in excess of 4.2%, but not in excess of 4.5%, shall for the next succeeding 30-day period increase the selling price stipulated in the following schedules for like quality milk at the rate of 1¢ per quart. Any distributor who, during any 30-day period, has sold milk in bulk or bottles, averaging a butterfat content in excess of 4.5% but not in excess of 5% shall, in addition to the above increase, increase the selling price for like quality milk at the rate of 1¢ per quart, and if the aforesaid average butterfat content shall exceed 5%, the distributor shall increase selling prices for like quality milk by an additional 1¢ for each additional 0.5 of one percent of butterfat contained in said milk over 5%.

3. Prices are for bottled milk unless otherwise specified.

4. The above price schedules do not include any occupational or sales tax imposed by the laws of any State, nor shall any deduction from said price schedules be made in any case therefor.

5. Peddlers shall sell all products at the established retail and wholesale prices, respectively.

6. Sales of milk by the Contracting Distributors to any unemployment relief agency may be at prices below those set forth in Exhibit B.

7. With the exception of Guaranteed and Certified Milk in which the extra cost of double capping required by law is already included in the price schedule, all bottled milk or other fluid dairy products sealed with double or protective caps shall carry a minimum charge of at least one cent (1 cent) per container.

8. Sales of articles in containers shall be made only in containers of the sizes and types specified, and where a grade and/or percentage of butterfat content is specified, only at the specified grade and/or percentage of butterfat.

9. The Los Angeles Milk Industry Board shall, as soon as reasonably practicable after the effective date of this Agreement, investigate the prices of "Milk Grade A Pasteurized" and "Raw Milk Grade A" as a class, and "Guaranteed Milk" and "Raw Milk Certified" as another class, and the relationship between the two classes; and shall within thirty days after the effective date of this Agreement report its findings to the Secretary together with such recommendations as to the amendment of the Agreement as in its opinion seem desirable. The contracting producers and the contracting distributors agree to abide by the decision of the Secretary in respect to any such amendment.

SCHEDULE I

LOS ANGELES SALES DISTRICT

(Includes all territory in the Los Angeles Sales Area except that specified as included in the San Bernardino Sales District and the Orange County Sales District.)

The following minimum wholesale, resale, and retail prices shall be in effect when the Los Angeles Market quotation of 92 score butter is such that Section 1 of Exhibit A and revised base is in effect:

	Wholesale prices	Store selling prices	Home delivered prices
Milk, Grade A, pasteurized:			
10-gallon cans	\$2. 50		
3-gallon cans	. 80		
2-gallon cans	. 55		
1-gallon can	. 30		
Quarts	. 07½	\$0. 09	\$0. 10
Pints	. 05	. 06	. 07
Third quarts	. 04		
Half pints	. 03		
Raw milk, Grade A:			
Quarts	. 07½	. 09	. 10
Pints	. 05	. 06	. 07
Third quarts	. 04		
Half pints	. 03		
Guaranteed milk:			
Quarts	. 11	. 12	. 13
Pints	. 06	. 07	. 08
Third quarts	. 05½		
Half pints	. 04½		
Raw milk, certified:			
Quarts	. 13	. 15	. 15
Pints	. 08	. 10	. 10
Third quarts	. 06		
Half pints	. 05		
Chocolate drink, quarts	. 07½	. 09	. 10
Coffee cream, 22 percent:			
10-gallon cans	8. 50		
3-gallon cans	2. 70		
2-gallon cans	1. 80		
Quarts	. 25	. 35	. 35
Pints	. 15	. 20	. 22
Half pints	. 09	. 11	. 12
Table cream, 27 percent:			
10-gallon cans	10. 00		
3-gallon cans	3. 15		
2-gallon cans	2. 10		
Quarts	. 28	. 40	. 40
Pints	. 17	. 22	. 25
Half pints	. 11	. 13	. 14
Whipping cream, 38 percent:			
10-gallon cans	14. 00		
3-gallon cans	4. 65		
2-gallon cans	3. 10		
Quarts	. 40	. 60	. 60
Pints	. 27	. 35	. 37
Half pints	. 15	. 18	. 20
Sour cream:			
Gallons	1. 00		
Half pints	. 08	. 10	. 11

	Wholesale prices	Store selling prices	Home delivered prices
Churned buttermilk:			
10-gallon cans	\$2. 00		
3-gallon cans	. 75		
2-gallon cans	. 50		
1-gallon cans	. 30		
Quarts	. 07½	\$0. 09	\$0. 10
Third quarts	. 04		
Half pints	. 03		
Skim milk:			
10-gallon cans	1. 40		
3-gallon cans	. 32		
1-gallon cans	. 16		
Quarts	. 06	. 07	. 08
Creamed cottage cheese:			
Pounds, bulk	. 11	. 15	
Cartons or jars, 10-ounce or less	. 08	. 10	. 10
Nonreturnable glass, 10-ounce or less	. 09	. 11	. 11

SCHEDULE II

LOS ANGELES SALES DISTRICT

The following minimum wholesale, resale, and retail prices shall be in effect when the Los Angeles Market quotations of 92 score butter is such that Section 2 of Exhibit A and revised base is in effect:

	Wholesale prices	Store selling prices	Home delivered prices
Milk, Grade A, pasteurized:			
10-gallon cans	\$2. 85		
3-gallon cans	. 90		
2-gallon cans	. 65		
1-gallon cans	. 34		
Quarts	. 08½	\$0. 10	\$0. 11
Pints	. 06		
Third quarts	. 04½		
Half pints	. 03½		
Raw milk, Grade A:			
Quarts	. 08½	. 10	. 11
Pints	. 06	. 07	. 08
Third quarts	. 04½		
Half pints	. 03½		
Guaranteed milk:			
Quarts	. 12	. 13	. 14
Pints	. 07	. 08	. 09
Third quarts	. 06		
Raw milk, certified:			
Quarts	. 14	. 16	. 16
Pints	. 09	. 11	. 11
Third quarts	. 06½		
Half pints	. 05½		
Chocolate drink, quarts	. 08½	. 10	. 11
Coffee cream, 22 percent:			
10-gallon cans	9. 50		
3-gallon cans	3. 20		
2-gallon cans	2. 20		
Quarts	. 30	. 38	. 40
Pints	. 17	. 22	. 24
Half pints	. 10	. 12	. 13

	Wholesale prices	Store selling prices	Home delivered prices
Table cream, 27 percent:			
10-gallon cans	\$11. 50		
3-gallon cans	3. 65		
2-gallon cans	2. 50		
Quarts	. 33	\$0. 43	\$0. 45
Pints	. 19	. 24	. 27
Half pints	. 12	. 14	. 15
Whipping cream, 38 percent:			
10-gallon cans	15. 50		
3-gallon cans	5. 50		
2-gallon cans	3. 65		
Quarts	. 48	. 65	. 68
Pints	. 30	. 38	. 40
Half pints	. 17	. 20	. 22
Sour cream:			
Gallon	1. 10		
Half pints	. 09	. 11	. 12
Churned buttermilk:			
10-gallon cans	2. 40		
3-gallon cans	. 85		
2-gallon cans	. 60		
1-gallon cans	. 34		
Quarts	. 08½	. 10	. 11
Third quarts	. 04½		
Half pints	. 03½		
Skim milk:			
10-gallon cans	1. 60		
3-gallon cans	. 55		
2-gallon cans	. 40		
1-gallon cans	. 20		
Quarts	. 07	. 08	. 09
Creamed cottage cheese:			
Pounds, bulk	. 12	. 16	
Cartons or jars, 10 ounces or less	. 09	. 11	. 11
Nonreturnable glass, 10 ounces or less	. 10	. 12	. 12

SCHEDULE III

LOS ANGELES SALES DISTRICT

The following minimum wholesale, resale, and retail prices shall be in effect when the Los Angeles market quotation of 92 score butter is such that Section 3 of Exhibit A and revised base is in effect:

	Wholesale prices	Store selling prices	Home delivered prices
Milk, Grade A:			
10-gallon cans	\$3. 15		
3-gallon cans	1. 00		
2-gallon cans	. 72		
1-gallon cans	. 38		
Quarts	. 09½	\$0. 11	\$0. 12
Pints	. 07	. 08	. 09
Third quarts	. 05		
Half pints	. 04		

	Wholesale prices	Store selling prices	Home delivered prices
Raw milk, Grade A:			
Quarts.....	\$0. 09½	\$0. 11	\$0. 12
Pints.....	. 07	. 08	. 09
Third quarts.....	. 05		
Half pints.....	. 04		
Guaranteed milk:			
Quarts.....	. 13	. 14	. 15
Pints.....	. 08	. 09	. 10
Third quarts.....	. 06½		
Half pints.....	. 05½		
Raw milk, certified:			
Quarts.....	. 15	. 17	. 17
Pints.....	. 10	. 12	. 12
Third quarts.....	. 07		
Half pints.....	. 06		
Chocolate drink, quarts.....	. 09½	. 11	. 12
Coffee cream, 22 percent:			
10-gallon cans.....	11. 00		
3-gallon cans.....	3. 55		
2-gallon cans.....	2. 45		
Quarts.....	. 34	. 42	. 44
Pints.....	. 19	. 25	. 27
Half pints.....	. 11	. 13	. 14
Table cream, 27 percent:			
10-gallon cans.....	13. 00		
3-gallon cans.....	4. 10		
2-gallon cans.....	2. 80		
Quarts.....	. 40	. 50	. 52
Pints.....	. 21	. 26	. 29
Half pints.....	. 13	. 15	. 16
Whipping cream, 38 percent:			
10-gallon cans.....	18. 00		
3-gallon cans.....	6. 15		
2-gallon cans.....	4. 10		
Quarts.....	. 53	. 70	. 73
Pints.....	. 36	. 44	. 46
Half pints.....	. 19	. 22	. 24
Sour cream:			
Gallon.....	1. 25		
Half pints.....	. 10	. 12	. 13
Churned buttermilk:			
10-gallon cans.....	2. 70		
3-gallon cans.....	. 95		
2-gallon cans.....	. 70		
1-gallon cans.....	. 38		
Quarts.....	. 09½	. 11	. 12
Third quarts.....	. 05		
Half pints.....	. 04		
Skim milk:			
10-gallon cans.....	1. 80		
3-gallon cans.....	. 65		
2-gallon cans.....	. 48		
1 gallon cans.....	. 25		
Quarts.....	. 08	. 09	. 10
Creamed cottage cheese:			
Pound bulk.....	. 13	. 17	
Cartons or jars, 10 ounces or less.....	. 09	. 11	. 11
Nonreturnable glass, 10 ounces or less.....	. 10	. 12	. 12

SCHEDULE IV

SAN BERNARDINO SALES DISTRICT

The San Bernardino Sales District includes all portions of Riverside and San Bernardino counties which are within the Los Angeles Sales Area as described in Paragraph D of this agreement, together with such towns and rural districts in Los Angeles County as are in whole or in part within a seven mile radius, measured from the city hall of Pomona, California.

The following minimum wholesale, resale, and retail prices shall be in effect when the Los Angeles Market quotation of 92 score butter is such that Section 1 of Exhibit A and revised base is in effect:

	Wholesale prices	Store selling prices	Home delivered prices
Grade A pasteurized and raw milk:			
10-gallon cans	\$2. 50		
3-gallon cans	. 80		
2-gallon cans	. 55		
1-gallon cans	. 30		
Quarts	. 08	\$0. 10	\$0. 10
Pints	. 06	. 07	. 07
Third quarts	. 04		
Half pints	. 03½		
Gallons, bulk ¹	. 35		
Guaranteed milk:			
Quarts	. 11	. 13	. 13
Pints	. 07	. 08	. 08
Raw milk, certified:			
Quarts	. 13	. 15	. 15
Pints	. 08	. 10	. 10
Third quarts	. 06		
Half pints	. 05		
Chocolate drink: Quarts	. 08	. 10	. 10
Table cream, 25 percent:			
3-gallon cans	2. 90		
2-gallon cans	1. 95		
Quarts	. 30	. 36	. 36
Pints	. 17	. 25	. 25
Half pints	. 11	. 14	. 14
Whipping cream, 38 percent:			
3-gallon cans	4. 65		
2-gallon cans	3. 10		
Quarts	. 40	. 60	. 60
Pints	. 27	. 37	. 37
Half pints	. 15	. 20	. 20
Sour cream:			
Gallons	1. 00		
Half pints	. 08	. 11	. 11
Churned buttermilk:			
10-gallon cans	2. 00		
3-gallon cans	. 75		
2-gallon cans	. 50		
1-gallon cans	. 30		
Quarts	. 08	. 10	. 10
Third quarts	. 04		
Half pints	. 03½		

¹ This price applies only to bulk milk sold on cash and carry basis at creamery or dairy.

	Wholesale prices	Store selling prices	Home delivered prices
Skim milk:			
10-gallon cans	\$1. 40		
3-gallon cans	. 45		
2-gallon cans	. 32		
1-gallon cans	. 16		
Quarts	. 06		\$0. 08
Creamed cottage cheese:			
Pounds, bulk	. 11	\$0. 15	
Cartons or jars, 10 ounces or less	. 08	. 10	. 10
Glass, 10 ounces or less	. 09	. 11	. 11

NOTE.—Prices for Beaumont, Banning, Palm Springs, Indio, and Coachella; prices for Arrowhead, Big Bear, Crestline, and other mountain resorts, use wholesale prices plus motor freight schedule; Interprice to licensed dairies, a 10-percent reduction from all wholesale prices will be made.

The prices listed below will apply for Beaumont, Banning, Palm Springs, Coachella, and Indio:

	Wholesale prices	Minimum store selling prices	Minimum home delivered prices
Grade A pasteurized and raw milk:			
10-gallon cans	\$3. 00		
3-gallon cans	1. 00		
2-gallon cans	. 65		
1-gallon cans	. 35		
Quarts	. 11	\$0. 14	\$0. 14
Pints	. 06	. 08	. 08
Third quarts	. 04		
Half pints	. 03½		
Guaranteed milk:			
Quarts	. 14	. 17	. 17
Half pints	. 04	. 06	. 06
Certified milk:			
Quarts	. 18	. 23	. 23
Pints	. 10	. 13	. 13
Half pints	. 05	. 07	. 07
Chocolate drink: Quarts	. 09	. 12	. 12
Table cream, 25 percent:			
3-gallon cans	3. 40		
2-gallon cans	2. 35		
Quarts	. 37	. 43	. 43
Pints	. 21	. 29	. 29
Half pints	. 13	. 16	. 16
Whipping cream, 38 percent:			
3-gallon cans	5. 00		
2-gallon cans	3. 50		
Quarts	. 58	. 70	. 70
Pints	. 38	. 42	. 42
Half pints	. 18	. 23	. 23
Buttermilk, churned:			
10-gallon cans	2. 75		
Gallons	. 35		
Quarts	. 10	. 12	. 12
Skim milk:			
10 gallons or more	1. 75		
Gallons	. 20		
Quarts	. 07	. 09	. 09
Creamed cottage cheese:			
Pounds, bulk	. 13	. 17	
Cartons or jars, 10 ounces or less	. 10	. 12	. 12
Nonreturnable glass, 10 ounces or less	. 11	. 13	. 13

SCHEDULE V

SAN BERNARDINO DISTRICT

The San Bernardino District includes all portions of Riverside and San Bernardino counties which are within the Los Angeles Sales Area as described in Paragraph D of this Agreement, together with such towns and rural districts in Los Angeles County as are wholly or in part within a seven-mile radius, measured from the city hall of Pomona, California.

The following minimum wholesale, resale and retail prices shall be in effect when the Los Angeles Market quotation of 92 score butter is such that Section 2 of Exhibit A and revised base is in effect:

	Wholesale prices	Store selling prices	Home delivered prices
Grade A pasteurized and raw milk:			
10-gallon cans -----	\$2. 85	-----	-----
3-gallon cans -----	. 90	-----	-----
2-gallon cans -----	. 65	-----	-----
1-gallon cans -----	. 34	-----	-----
Quarts -----	. 09	\$0. 11	\$0. 11
Pints -----	. 07	. 08	. 08
Third quarts -----	. 04½	-----	-----
Half pints -----	. 03½	-----	-----
Gallons, bulk ¹ -----	. 40	-----	-----
Guaranteed milk:			
Quarts -----	. 12	. 14	. 14
Pints -----	. 08	. 09	. 09
Raw milk certified:			
Quarts -----	. 14	. 16	. 16
Pints -----	. 09	. 11	. 11
Third quarts -----	. 06½	-----	-----
Half pints -----	. 05½	-----	-----
Chocolate drink: Quarts -----	. 09	. 11	. 11
Table cream, 25 percent:			
3-gallon cans -----	3. 10	-----	-----
2-gallon cans -----	2. 10	-----	-----
Quarts -----	. 33	. 40	. 40
Pints -----	. 19	. 27	. 27
Half pints -----	. 12	. 15	. 15
Whipping cream, 38 percent:			
3-gallon cans -----	5. 50	-----	-----
2-gallon cans -----	3. 65	-----	-----
Quarts -----	. 48	. 68	. 68
Pints -----	. 30	. 40	. 40
Half pints -----	. 17	. 22	. 22
Sour cream:			
Gallons -----	1. 10	-----	-----
Half pints -----	. 09	. 12	. 12
Churned buttermilk:			
10-gallon cans -----	2. 40	-----	-----
3-gallon cans -----	. 85	-----	-----
2-gallon cans -----	. 60	-----	-----
1-gallon cans -----	. 34	-----	-----
Quarts -----	. 09	. 11	. 11
Third quarts -----	. 04½	-----	-----
Half pints -----	. 03½	-----	-----

¹ This price applied only to bulk milk sold on cash-and-carry basis at creamery or dairy.

	Wholesale prices	Store selling prices	Home delivered prices
Skim milk:			
10-gallon cans.....	\$1. 50	-----	-----
3-gallon cans.....	. 55	-----	-----
2-gallon cans.....	. 40	-----	-----
1-gallon cans.....	. 20	-----	-----
Quarts.....	. 07	-----	\$0. 09
Creamed cottage cheese:			
Pounds, bulk.....	. 12	\$0. 16	-----
Cartons or jars, 10 ounces or less.....	. 09	. 11	. 11
Nonreturnable glass, 10 ounces or less.....	. 10	. 12	. 12

Prices for Arrowhead, Big Bear, Crestline and other mountain resorts, use wholesale prices plus Motor Transit Freight Schedule; interprice to licensed dairies, a 10 percent reduction from all wholesale prices will be made.

The prices listed below will apply for Beaumont, Banning, Palm Springs, Coachella, and Indio:

	Wholesale prices	Store selling prices	Home delivered prices
Grade A pasteurized and raw milk:			
10-gallon cans.....	\$3. 50	-----	-----
3-gallon cans.....	1. 05	-----	-----
2-gallon cans.....	. 70	-----	-----
1-gallon cans.....	. 40	-----	-----
Quarts.....	. 12	\$0. 15	\$0. 15
Pints.....	. 07	. 09	. 09
Third quarts.....	. 05	-----	-----
Half pints.....	. 04	-----	-----
Guaranteed milk:			
Quarts.....	. 15	. 18	. 18
Half pints.....	. 05	. 07	. 07
Certified milk:			
Quarts.....	. 20	. 25	. 25
Pints.....	. 12	. 15	. 15
Half pints.....	. 06	. 07	. 07
Chocolate drink: quarts.....	. 10	. 13	. 13
Table Cream, 25 percent:			
3-gallon cans.....	4. 50	-----	-----
2-gallon cans.....	3. 00	-----	-----
Quarts.....	. 50	. 60	. 60
Pints.....	. 30	. 40	. 40
Half pints.....	. 17	. 22	. 22
Whipping cream, 38 percent:			
3-gallon cans.....	5. 50	-----	-----
2-gallon cans.....	4. 00	-----	-----
Quarts.....	. 80	. 90	. 90
Pints.....	. 45	. 50	. 50
Half pints.....	. 25	. 30	. 30
Buttermilk, churned:			
10-gallon cans.....	3. 50	-----	-----
Gallons.....	. 40	-----	-----
Quarts.....	. 12	. 14	. 14
Skim milk:			
10 gallons.....	2. 00	-----	-----
Gallons.....	. 25	-----	-----
Quarts.....	. 10	. 10	. 10
Creamed cottage cheese:			
Pounds, bulk.....	. 14	. 18	-----
Cartons or jars, 10 ounces or less.....	. 11	. 13	. 13
Nonreturnable glass, 10 ounces or less.....	. 12	. 14	. 14

SCHEDULE VI

SAN BERNARDINO DISTRICT

The San Bernardino Sales District includes all portions of Riverside and San Bernardino counties which are within the Los Angeles Sales Area as described in Paragraph D of this Agreement, together with such towns and rural districts in Los Angeles County as are wholly or in part within a seven-mile radius, measured from the city hall of Pomona, California.

The following minimum wholesale, resale, and retail prices shall be in effect when the Los Angeles Market quotation of 92-score butter is such that Section 3 of Exhibit A and revised base is in effect:

	Wholesale prices	Minimum store selling prices	Minimum home delivered prices
Grade A pasteurized and raw milk:			
10-gallon cans	\$3. 15		
3-gallon cans	1. 00		
2-gallon cans .....	. 72		
1-gallon cans .....	. 38		
Quarts .....	. 10	\$0. 12	\$0. 12
Pints .....	. 07	. 09	. 09
Third quarts .....	. 05		
Half pints .....	. 04		
Gallon, bulk ¹ .....	. 44		
Guaranteed milk:			
Quarts .....	. 13	. 15	. 15
Pints .....	. 08	. 10	. 10
Raw milk, certified:			
Quarts .....	. 15	. 17	. 17
Pints .....	. 10	. 12	. 12
Third quarts .....	. 07		
Half pints .....	. 06		
Chocolate milk: Quarts .....	. 10	. 12	. 12
Table cream, 25 percent:			
3-gallon cans	4. 00		
2-gallon cans	2. 70		
Quarts .....	. 40	. 50	. 50
Pints .....	. 21	. 29	. 29
Half pints .....	. 13	. 16	. 16
Whipping cream, 38 percent:			
3-gallon cans	6. 20		
2-gallon cans	4. 10		
Quarts .....	. 53	. 73	. 73
Pints .....	. 36	. 46	. 46
Half pints .....	. 19	. 24	. 24
Sour cream:			
Gallons	1. 25		
Half pints .....	. 10	. 13	. 13
Churned buttermilk:			
10-gallon cans	2. 70		
3-gallon cans .....	. 95		
2-gallon cans .....	. 70		
1-gallon cans .....	. 38		
Quarts .....	. 10	. 12	. 12
Third quarts .....	. 05		
Half pints .....	. 04		

¹ This price applies only to bulk milk sold on cash-and-carry basis at creamery or dairy.

	Wholesale prices	Minimum store selling prices	Minimum home delivered prices
Skim milk:			
10-gallon cans	\$1. 80		
3-gallon cans	. 65		
2-gallon cans	. 48		
1-gallon cans	. 25		
Quarts	. 08	\$0. 10	\$0. 10
Creamed cottage cheese:			
Pounds, bulk	. 13	. 17	
Cartons or jars, 10 ounces or less	. 09	. 11	. 11
Nonreturnable glass, 10 ounces or less	. 10	. 12	. 12

Interprice licensed dairies, a 10% reduction will be made from all listed wholesale prices. Mountain resorts and Desert areas add to all milk, Motor Transit Freight.

The prices listed below will apply for Beaumont, Banning, Palm Springs, Coachella, and Indio.

	Wholesale prices	Minimum store selling prices	Minimum home delivered prices
Grade A pasteurized and raw milk:			
10-gallon cans	\$3. 85		
3-gallon cans	1. 35		
2-gallon cans	. 77		
1-gallon cans	. 44		
Quarts	. 13	\$0. 16	\$0. 16
Pints	. 07	. 09	. 09
Third quarts	. 05		
Half pints	. 04		
Guaranteed milk:			
Quarts	. 15	. 18	. 18
Pints	. 08	. 10	. 10
Half pints	. 05	. 07	. 07
Certified milk:			
Quarts	. 20	. 25	. 25
Pints	. 12	. 15	. 15
Half pints	. 06	. 07	. 07
Chocolate drink: Quarts	. 10	. 13	. 13
Table cream, 25 percent:			
3-gallon cans	4. 50		
2-gallon cans	3. 00		
Quarts	. 50	. 60	. 60
Pints	. 30	. 40	. 40
Half pints	. 17	. 22	. 22
Whipping cream, 38 percent:			
3-gallon cans	5. 50		
2-gallon cans	4. 00		
Quarts	. 80	. 90	. 90
Pints	. 45	. 50	. 50
Half pints	. 25	. 30	. 30
Buttermilk, churned:			
10-gallon cans	3. 50		
Gallons	. 40		
Quarts	. 12	. 14	. 14
Skim milk:			
10 gallons or more	2. 00		
Gallons	. 25		
Quarts	. 08	. 10	. 10
Creamed cottage cheese:			
Pounds, bulk	. 14	. 18	
Cartons or jars, 10 ounces or less	. 11	. 13	. 13
Nonreturnable glass, 10 ounces or less	. 12	. 14	. 14

SCHEDULE VII

ORANGE COUNTY DISTRICT (10 CENTS PER QUART, RETAIL)

The Orange County Sales District includes all communities in Orange County.

The following minimum wholesale, resale, and retail prices shall be in effect when the Los Angeles Market quotation of 92 score butter is such that Section 1 of Exhibit A and revised base is in effect.

	Wholesale prices	Store selling prices	Home delivered prices
Milk, grade A pasteurized:			
10-gallon cans	\$2. 50		
3-gallon cans	. 85		
2-gallon cans	. 60		
1-gallon cans	. 32		
Quarts	. 08	\$0. 10	\$0. 10
Pints	. 06	. 07	. 07
Third quarts	. 04		
Half pints	. 03		
Raw milk, grade A:			
Quarts	. 08	. 10	. 10
Pints	. 06	. 07	. 07
Third quarts	. 04		
Half pints	. 03		
Guaranteed milk:			
Quarts	. 11	. 13	. 13
Pints	. 08	. 09	. 09
Raw milk, certified:			
Quarts	. 18	. 20	. 20
Pints	. 11	. 12	. 12
Third quarts	. 05		
Half pints	. 04		
Chocolate drink: Quarts	. 08	. 10	. 10
Table cream, 27 percent:			
3-gallon cans	3. 15		
2-gallon cans	2. 10		
Quarts	. 28	. 40	. 40
Half pints	. 11	. 14	. 14
Whipping cream, 38 percent:			
3-gallon cans	4. 65		
2-gallon cans	3. 10		
Quarts	. 40	. 60	. 60
Half pints	. 17	. 20	. 20
Sour cream:			
Gallon cans	1. 00		
Half pints	. 09	. 11	. 11
Churned buttermilk:			
10-gallon cans	\$2. 00		
3-gallon cans	. 85		
2-gallon cans	. 60		
1-gallon cans	. 32		
Quarts	. 08	. 10	. 10
Third quarts	. 04		
Half pints	. 03		
Skim milk:			
10-gallon cans	1. 30		
3-gallon cans	. 45		
2-gallon cans	. 30		
1-gallon cans	. 15		
Quarts	. 06	. 07	. 07
Creamed cottage cheese:			
Pounds, bulk	. 11	. 15	
Cartons or jars, 10 ounces or less	. 08	. 10	. 10
Nonreturnable glass, 10 ounces or less	. 09	. 11	. 11
16-ounce returnable glass	. 13	. 15	. 15

SCHEDULE VIII

ORANGE COUNTY SALES DISTRICT

The Orange County Sales District includes all communities in Orange County.

The following minimum wholesale, resale, and retail prices shall be in effect when the Los Angeles Market quotation of 92 score butter is such that Section 2 of Exhibit A and revised base is in effect.

	Wholesale prices	Store selling prices	Home delivered prices
Milk, grade A, pasteurized:			
10-gallon cans	\$2. 85		
3-gallon cans	. 95		
2-gallon cans	. 70		
1-gallon cans	. 36		
Quarts	. 09	\$0. 11	\$0. 11
Pints	. 07	. 08	. 08
Third quarts	. 04½		
Half pints	. 03½		
Raw milk, grade A:			
Quarts	. 09	. 11	. 11
Pints	. 07	. 08	. 08
Third quarts	. 04½		
Half pints	. 03½		
Guaranteed milk:			
Quarts	. 12	. 14	. 14
Pints	. 09	. 10	. 10
Raw milk, certified:			
Quarts	. 18	. 20	. 20
Pints	. 11	. 12	. 12
Third quarts	. 05½		
Half pints	. 04½		
Chocolate drink: Quarts	. 09	. 11	. 11
Table cream, 27 percent:			
3-gallon cans	3. 65		
2-gallon cans	2. 50		
Quarts	. 45	. 50	. 50
Half pints	. 13	. 15	. 15
Whipping cream, 38 percent:			
3-gallon cans	5. 50		
2-gallon cans	3. 65		
Quarts	. 58	. 68	. 68
Half pints	. 19	. 22	. 22
Sour cream:			
Gallon	1. 10		
Half pints	. 10	. 12	. 12
Churned buttermilk:			
10-gallon cans	2. 40		
3-gallon cans	. 95		
2-gallon cans	. 70		
1-gallon cans	. 36		
Quarts	. 09	. 11	. 11
Third quarts	. 04½		
Half pints	. 03½		
Skin milk:			
10-gallon cans	1. 50		
3-gallon cans	. 55		
2-gallon cans	. 38		
1-gallon cans	. 20		
Quarts	. 07	. 08	. 08
Creamed cottage cheese:			
Pounds, bulk	. 12	. 16	
Cartons or jars, 10 ounces or less	. 09	. 11	. 11
Nonreturnable glass, 10 ounces or less	. 10	. 12	. 12
16-ounce returnable	. 14	. 16	. 16

SCHEDULE IX

ORANGE COUNTY SALES DISTRICT

The Orange County Sales District includes all communities in Orange County.

The following minimum wholesale, resale, and retail prices shall be in effect when the Los Angeles Market quotation of 92 score butter is such that Section 3 of Exhibit A and revised base is in effect:

	Wholesale prices	Store selling prices	Home delivered prices
Milk, Grade A, pasteurized:			
10-gallon cans-----	\$3. 20		
3-gallon cans-----	1. 05		
2-gallon cans-----	. 80		
1-gallon cans-----	. 40		
Quarts-----	. 10	\$0. 12	\$0. 12
Pints-----	. 08	. 09	. 09
Third quarts-----	. 06		
Half pints-----	. 04		
Raw milk, Grade A:			
Quarts-----	. 10	. 12	. 12
Pints-----	. 08	. 09	. 09
Third quarts-----	. 05		
Half pints-----	. 04		
Guaranteed milk:			
Quarts-----	. 13	. 15	. 15
Pints-----	. 10	. 11	. 11
Raw milk, certified:			
Quarts-----	. 19	. 21	. 21
Pints-----	. 12	. 13	. 13
Third quarts-----	. 06		
Half pints-----	. 05		
Chocolate drink, quarts-----	. 10	. 12	. 12
Table cream, 27 percent:			
3-gallon cans-----	4. 10		
2-gallon cans-----	2. 80		
Quarts-----	. 50	. 55	. 55
Half pints-----	. 14	. 16	. 16
Whipping cream, 38 percent:			
3-gallon cans-----	6. 20		
2-gallon cans-----	4. 50		
Quarts-----	. 66	. 76	. 76
Half pints-----	. 21	. 24	. 24
Sour cream:			
Gallon-----	1. 20		
Half pints-----	. 11	. 13	. 13
Churned buttermilk:			
10-gallon cans-----	2. 80		
3-gallon cans-----	1. 05		
2-gallon cans-----	. 80		
1-gallon cans-----	. 40		
Quarts-----	. 10	. 12	. 12
Third quarts-----	. 05		
Half pints-----	. 04		
Skim milk:			
10-gallon cans-----	1. 70		
3-gallon cans-----	. 65		
2-gallon cans-----	. 46		
1-gallon cans-----	. 25		
Quarts-----	. 08	. 09	. 09
Creamed cottage cheese:			
Pounds, bulk-----	. 13	. 17	
Cartons or jars, 10 ounces or less-----	. 09	. 11	. 11
Nonreturnable glass, 10 ounces or less-----	. 10	. 12	. 12
16-ounce returnable jars-----	. 15	. 17	. 17

SCHEDULE X

COTTAGE CHEESE AND CHURNED BUTTERMILK RULES, REGULATIONS,
AND PRICES

1. The following rules, regulations, and price schedules apply to the Los Angeles, San Bernardino, and Orange Districts, except Beaumont, Banning, Palm Springs, Coachella, and Indio in the San Bernardino Sales Districts. There shall be added to the prices in this schedule in the case of mountain resorts and desert areas in the San Bernardino District the motor transit freight rate as established by the California Railroad Commission, irrespective of the actual mode of delivery.

QUANTITY DISCOUNTS

2. (a) The wholesale prices of churned buttermilk in 10-gallon cans set forth in Schedules B (1) to B (9), inclusive, of this exhibit shall be subject to the following quantity discount: When a customer buys more than twelve 10-gallon cans per week, there shall be a discount of ten percent on the wholesale price of 10-gallon cans set forth in said schedules. All sales to customers shall be invoiced at the full wholesale price. At the end of each month credit shall be granted to those customers whose purchases are such as entitle them to the foregoing discount for discount so earned.

(b) The wholesale prices of bulk creamed cottage cheese set forth in Schedules B (1) to B (9), inclusive, of this Exhibit shall be subject to the following quantity discounts: When a customer buys more than 250 pounds and not in excess of 1,250 pounds per month, there shall be a discount of one cent per pound. When a customer buys in excess of 1,250 pounds per month, there shall be a discount of two cents a pound. All sales to customers shall be invoiced net without discount. At the end of each month, credit shall be granted to those customers whose purchases are such as entitle them to the foregoing discounts for discounts so earned.

(c) When a customer is purchasing a quantity of bulk creamed cottage cheese and/or churned buttermilk from two or more distributors which if purchased from a single distributor would entitle him to either or both of the foregoing quantity discounts, he shall be entitled to such discounts from each of such distributors pro rata to the quantities received from each such distributor.

DRY COTTAGE CHEESE

3. The minimum prices for dry cottage cheese, including therein dry curd, special mix, and hoop cheese, shall be as follows:

	Wholesale	Resale
When Section 1 and revised base prevail.....	\$0. 08	\$0. 10
When Section 2 and revised base prevail.....	. 09	1. 11
When Section 3 and revised base prevail.....	. 10	1. 12

¹ Resale prices for hoop cheese shall be two cents more than the corresponding resale prices applicable to dry curd and special mix.

SCHEDULE XI

CREAM JOBBING PRICE SCHEDULE

The following schedule of minimum prices apply to sales by cream jobbers to persons (1) who are engaged principally in the distribution of milk and its products, and (2) who have a "creamery operator's" factory license issued by the Department of Agriculture of the State of California. Such schedule shall be in effect when the Los Angeles Market quotation of 92-score butter is such that Section 1 of Exhibit A and revised base is in effect:

CHURNING CREAM

For each pound of butterfat contained therein add 8¢ to the Los Angeles Market quotation for 92-score butter effective for the day of delivery.

GRADE A CREAM IN TEN-GALLON CANS

For each pound of butterfat contained therein add to the Los Angeles Market quotation for 92-score butter effective for the date of delivery.

	In weekly quantities of—		
	1-14 cans	15-34 cans	35 cans or over
Raw cream, 38-40 percent.....	\$0. 17	\$0. 16	\$0. 15
Pasteurized cream, 38-40 percent.....	. 19	. 18	. 17
Raw cream, standardized to other butterfat percentages.....	. 19	. 18	. 17
Pasteurized cream, standardized to other butterfat percentages.....	. 20	. 19	. 18

SKIM MILK (IN BULK, PER GALLON)

Condensed:		
10 gallons or more in a single delivery.....		\$0. 25
Deliveries of less than 10 gallons.....		. 30
Not condensed:		
10 gallons or more in a single delivery.....		. 07
Deliveries of less than 10 gallons.....		Wholesale prices apply

SCHEDULE XII

CREAM JOBBING PRICE SCHEDULE

The following schedule of minimum prices apply to sales by cream jobbers to persons (1) who are engaged principally in the distribution of milk and its products and (2) who have a "creamery operator's" factory license issued by the Department of Agriculture of the State of California. Such schedule shall be in effect when the Los Angeles Market quotation of 92 score butter is such that Section 2 of Exhibit A and revised base is in effect.

CHURNING CREAM

For each pound of butterfat contained therein add 10¢ to the Los Angeles Market quotation for 92 score butter effective for the day of delivery.

GRADE A CREAM IN TEN GALLON CANS

For each pound of butterfat contained therein add to the Los Angeles Market quotation for 92 score butter effective for the date of delivery.

	In weekly quantities of—		
	1-14 cans	15-34 cans	35 cans or over
Raw cream, 38-40 percent.....	\$0. 20	\$0. 19	\$0. 18
Pasteurized cream, 38-40 percent.....	. 22	. 21	. 20
Raw cream standardized to other butterfat percentages.....	. 22	. 21	. 20
Pasteurized cream standardized to other butterfat percentages.....	. 23	. 22	. 21

SKIM MILK (IN BULK, PER GALLON)

Condensed:	
10 gallons or more in a single delivery.....	\$0. 30
Deliveries of less than 10 gallons.....	. 35
Not condensed:	
10 gallons or more in a single delivery.....	. 08
Deliveries of less than 10 gallons.....	Wholesale prices apply

SCHEDULE XIII

CREAM JOBBING PRICE SCHEDULE

The following schedules of minimum prices apply to sales by cream jobbers to persons (1) who are engaged principally in the distribution of milk and its products and (2) who have a "creamery operator's" factory license issued by the Department of Agriculture of the State of California. Such schedules shall be in effect when the Los Angeles Market quotation of 92 score butter is such that Section 3 of Exhibit A and revised base is in effect.

CHURNING CREAM

For each pound of butterfat contained therein add 10¢ to the Los Angeles Market quotation for 92 score butter effective for the day of delivery.

GRADE A CREAM IN TEN GALLON CANS

For each pound of butterfat contained therein add to the Los Angeles Market quotation for 92 score butter effective for the date of delivery.

	In weekly quantities of—		
	1-14 cans	15-34 cans	35 cans or over
Raw cream, 38-40 percent.....	\$0. 24	\$0. 23	\$0. 22
Pasteurized cream, 38-40 percent.....	. 26	. 25	. 24
Raw cream standardized to other butterfat percentages.....	. 26	. 25	. 24
Pasteurized cream standardized to other butterfat percentages.....	. 27	. 26	. 25

SKIM MILK (IN BULK, PER GALLON)

Condensed:		
10 gallons or more in a single delivery.....		\$0. 32
Deliveries of less than 10 gallons.....		. 37
Not condensed:		
10 gallons or more in a single delivery.....		. 09
Deliveries of less than 10 gallons.....		Wholesale prices apply

SCHEDULE XIV

PRICES TO PEDDLERS FOR RESALE

The following minimum prices f.o.b. place of bottling or other packaging shall be charged to peddlers who buy for resale:

	When Sec. 1 of Ex. A and revised base is in effect	When Sec. 2 of Ex. A and revised base is in effect	When Sec. 3 of Ex. A and revised base is in effect
Pasteurized Grade A milk:			
3-gallons.....	\$0. 70	\$0. 80	\$0. 90
2-gallons.....	. 45	. 55	. 62
1-gallon.....	. 24	. 28	. 32
Quarts.....	. 06	. 07	. 08
Pints.....	. 03	. 04	. 05
Third quarts.....	. 02 $\frac{1}{2}$	. 03 $\frac{1}{2}$	. 04
Half pints.....	. 02	. 02 $\frac{1}{2}$	. 03
Grade A raw milk:			
Quarts.....	. 06	. 07	. 08
Pints.....	. 03	. 04	. 05
Third quarts.....	. 02 $\frac{1}{2}$	. 03 $\frac{1}{2}$	. 04
Half pints.....	. 02	. 02 $\frac{1}{2}$	. 03
Chocolate drink:			
Quarts.....	. 06	. 07	. 08
Pints.....	. 03	. 04	. 05
Third quarts.....	. 02 $\frac{1}{2}$	. 03 $\frac{1}{2}$	. 04
Half pints.....	. 02	. 02 $\frac{1}{2}$	. 03
Churned buttermilk:			
3-gallons.....	. 70	. 80	. 90
2-gallons.....	. 45	. 55	. 65
1-gallon.....	. 24	. 28	. 32
Quarts.....	. 06	. 07	. 08
Pints.....	. 03 $\frac{1}{2}$	. 04	. 04 $\frac{1}{2}$
Third quarts.....	. 03	. 03 $\frac{1}{2}$	. 04
Half pints.....	. 02	. 02 $\frac{1}{2}$	. 03
Guaranteed milk:			
Quarts.....	. 09	. 10	. 11
Pints.....	. 05	. 06	. 07

	When Sec. 1 of Ex. A and re- vised base is in effect	When Sec. 2 of Ex. A and re- vised base is in effect	When Sec. 3 of Ex. A and re- vised base is in effect
Certified milk, raw:			
Quarts.....	\$0. 11	\$0. 12	\$0. 13
Pints.....	. 07	. 08	. 09
Coffee cream, 22 percent:			
Quarts.....	. 23	. 28	. 32
Pints.....	. 14	. 16	. 18
Half pints.....	. 07	. 08	. 09
Table cream, 27 percent:			
Quarts.....	. 27	. 32	. 39
Pints.....	. 16	. 18	. 20
Half pints.....	. 09	. 10	. 11
Whipping cream, 38 percent:			
Quarts.....	. 37	. 45	. 50
Pints.....	. 22	. 25	. 31
Half pints.....	. 13	. 15	. 17
Sour cream: Half pints.....	. 07	. 08	. 09
Creamed cottage cheese: Glass, 10 ounces or less.....	. 09	. 10	. 10
Skim milk: 1 gallon.....	. 11	. 15	. 20

EXHIBIT C

RULES FOR CONTROL OF PRODUCTION AND ESTABLISHMENT OF SURPLUS PRICE TO PRODUCERS OF GRADE A MARKET MILK

Rules for control of production.—The following rules shall be applicable to all producers of Grade A Market Milk.

1. The term "production base period" as used herein means the period March 16, 1933 to June 15, 1933, both dates inclusive.

2. The term "deliveries" as used herein means any or all of the following:

(a) Milk shipped by any producer to any distributor of Grade A Market Milk.

(b) Milk shipped by a producer to the surplus plant of Producers Arbitration Committee, Inc.

(c) Milk sold by a producer as a distributor either as Grade A Market Milk or as fluid cream or both.

3. The term "market percentage" means the percentage arrived at by dividing the daily average of the total deliveries of all producers who shipped milk during the production base period into the daily average quantity of milk sold for consumption as whole milk in the Los Angeles Sales Area during the month of June 1933 as determined by Los Angeles Milk Industry Board.

4. *General bases.*—The established base of each such producer marketing milk in the Los Angeles Sales Area on the effective date of this Agreement who was marketing milk during the entire production base period shall be arrived at as follows: Determine the average daily deliveries of each such producer during the production base period and apply the market percentage thereto. The resulting figure will be the established base of each such producer.

5. *Bases for producers starting deliveries after March 16 but on or before June 15, 1933.*—The established base of each such producer now marketing milk in the Los Angeles Sales Area who commenced to market milk after March 16, 1933, but on or prior to June 15, 1933, shall be arrived at as follows:

A. If any such producer so elects, his deliveries during the portion of the production base period in which he was marketing milk in the Los Angeles Sales Area may be treated as if such deliveries were his total deliveries during the full production base period. Determine the total deliveries of such producer and divide the same by 92, and apply the market percentage against the daily average quantity thus arrived at. The resulting quantity shall be the established base of each such producer.

B. If such producer does not elect to have his base established as provided in paragraph A above, then determine the total deliveries of such producer during a period of 92 days beginning with the date on which he commenced to market milk in the Los Angeles Sales Area and divide such total by 184. The resulting figure will be the established base of such producer.

6. *Bases of producers starting on and after June 16, 1933.*—The established base of each producer now marketing milk in the Los Angeles Sales Area who did not commence to market milk in the Los Angeles Sales Area on or prior to June 15, 1933, or who commences to market milk after the effective date of this Agreement shall be arrived at as follows: Determine the deliveries of such producer during a period of 92 days beginning with the date on which he begins to market milk in the Los Angeles Sales Area and divide the total of such deliveries by 368. The resulting figure will be the established base of such producer. In the case of any such producer whose established base cannot be determined fully as of the last day of any month beginning with the month of October 1933, a temporary established base pending the completion of 92 days of deliveries shall be determined in respect of each calendar month by determining the total deliveries of each producer for the period beginning with the date on which he commenced to market milk in the Los Angeles Sales Area and ending with the last day of such calendar month and dividing such total by four times the number of days included in such period. Such temporary base shall, for all purposes of this agreement be considered the established base of such producers in respect of any such monthly accounting period.

7. *Adjustments of bases to deliveries.*—Any producer whose daily deliveries for any three consecutive months excluding months prior to the month of November 1933 is less than 90% of his established base will thereby establish a new base according to his average daily deliveries during such three month period. The application of this paragraph shall be subject to the provisions of paragraph 9.

8. *"Sales of bases."*—Sales of bases are allowed only in conjunction with the sale of cows and may be apportioned between the buyer and seller in accordance with the number of cows which the buyer has purchased and the number of cows which the seller has retained unsold. The buyer and the seller shall, in case of voluntary sale, jointly sign a statement in writing showing the amount of bases transferred to the buyer and retained by the seller, respectively, which writing shall be filed with the Producers' Arbitration Committee, Inc., within five days from the date of sale. Bases acquired by purchase of cows may be added to existing bases if any exist.

9. *Effect of fire, etc.*—The established base shall remain in effect for a period of three months following the initial test for tuberculosis or for contagious abortion by County, State or Federal authorities, the loss of barn or herd, or both, by fire or Act of God. The established base shall be retained for a period of 45 days in case deliveries of Grade A Market Milk are shut off or excluded by order of any Board of Health having jurisdiction in the premises and in case of quarantine.

ESTABLISHMENT OF ADJUSTED BASE PRICE

1. Producers' Arbitration Committee, Inc., is operating and will continue to operate a surplus plant to which is delivered all milk from producers in the Los Angeles Milk Shed having established bases in excess of the requirements of contracting distributors in the Los Angeles Sales Area for distribution as fluid milk in said area. Such surplus plant will have the following sources of receipts:

(a) The net proceeds arising from the sale of butter and powdered skimmed milk which has been manufactured by it from the butter fat and skimmed milk derived from milk delivered to the surplus plant. (Such net proceeds shall be the gross proceeds less the reasonable cost of operation of the surplus plant and less such amount as the Producers' Arbitration Committee, Inc., shall retain as working capital for the operation of the plant.)

(b) The proceeds of such milk delivered to it which it may have, under authority of Producers' Arbitration Committee, Inc., sold in time of shortage to contracting distributors in the Los Angeles Sales Area.

(c) The difference between the full base price and the surplus price as determined in accordance with the provisions of Exhibit A, Schedule I, and Exhibit A, Schedule III, which is payable under the provisions of Paragraphs 5 (a), 5 (b), and 5 (c), of this agreement.

2. The surplus plant will be accountable to producers delivering milk to it for the full base price in respect of deliveries not in excess of the individual producer's base, and the surplus price in respect of deliveries in excess of each producer's base. The total of the amounts so to be accounted for shall be computed and from the result of such computation shall be deducted the receipts from the operation of the surplus plant determined in the manner provided in the preceding paragraph. The difference will be the loss to the surplus plant resulting from its operations, to be charged against all deliveries of base milk whether to the surplus plant or to the contracting distributors.

3. The amount of the loss, determined as aforesaid, shall be divided by the total of all delivered base, expressed in terms of pounds of butterfat, whether to contracting distributors or to the surplus plant, the resulting figures being the amount per pound of butter fat which it is necessary to charge back against delivered bases of all producers in order to obtain the adjusted base price.

4. The difference between the full base price determined according to the provisions of Exhibit A, Schedule I, and Exhibit A, Schedule III, and the aforesaid loss per pound of butterfat determined as in the preceding paragraph, shall be the adjusted base price to be paid to all producers, whether delivering to contracting distributors or to the surplus plant, for deliveries not in excess of their respective bases.

5. The difference between the base price and the adjusted base price in respect of the base milk of all producers delivering to contracting distributors, which difference is payable to Producers' Arbitration Committee, Inc., in accordance with the provisions of paragraph 5 of this Agreement when added to the similar deduction made directly by the surplus plant in respect of the base milk of all producers delivering to the surplus plant, results in a uniform adjusted base price for deliveries not in excess of base quantities of all producers.

6. Producers' Arbitration Committee, Inc., shall secure the necessary data from the contracting distributors and from the surplus plant, shall compute the foregoing adjustments each month, shall submit a statement containing such adjustments to the Los Angeles Milk Industry Board for its approval, and upon its approval shall notify distributors and producers as to the payments to be made by them, respectively, in accordance with the foregoing principles. It shall also cause to be paid the adjusted base price and/or surplus price to producers delivering base milk and/or surplus milk to the surplus plant.

7. Any sums deducted by the Producers' Arbitration Committee, Inc., and retained as working capital for the operation of the plant as provided in paragraph 1 of this Exhibit C shall be set up on the books of the Producers' Arbitration Committee, Inc., as a separate fund to the credit of each producer from whom such funds were deducted; and in case of liquidation of Producers' Arbitration Committee, Inc., or discontinuance of business by contributing producers there shall be paid back to each producer the proportion of the total net worth of the Association which his contribution is to the total of all sums so contributed. Producers' Arbitration Committee, Inc., shall develop and make effective a financing plan, with approval of the Los Angeles Milk Industry Board, to cover such deductions for working capital under which monthly deductions and total accumulations will meet the capital needs of the Producers' Arbitration Committee, Inc., without accumulation of unnecessary sums.

8. Producers' Arbitration Committee, Inc., may make such regulations as may be necessary to carry out the operations of the surplus plant and adjustment of prices to producers in accordance with the foregoing principles, such regulations to be subject to the approval of the Los Angeles Milk Industry Board and the Secretary.

9. In the event the daily average quantity of milk sold for consumption as whole milk in the Los Angeles Sales Area becomes so decreased or increased as to render impractical, in the opinion of the Los Angeles Milk Industry Board, the accounting for such variations through adjustments in the base price said producers as provided in paragraph 4, Schedule "C", the Producers' Arbitration Committee, Inc., shall with the approval of the Los Angeles Milk Industry Board and the Secretary, make such uniform increases or decreases, as the case may be, in all existing established bases of producers, as will cause the sum total of all bases adjusted as aforesaid, to again approximate in amount the daily average quantity of milk sold for consumption as whole milk in the Los Angeles Sales Area.

EXHIBIT D

LOS ANGELES MILK INDUSTRY BOARD

1. The Los Angeles Milk Industry Board shall be composed of thirteen members all of whose appointments shall be subject to the approval of the Secretary, to wit:

(a) Six producers. Five of these shall be selected by the Producers' Arbitration Committee, Inc. (One from each of the following five member associations: California Milk Producers' Association, Independent Milk Producers' Association, Los Angeles County Natural Milk Producers' Association, Los Angeles Mutual Dairymen's Association, Southern California Bottled Raw Milk Association.) The sixth producer shall be selected by producers not members of the five associations of producers mentioned above, provided, however, that if such producers have not selected a member within five days after the effective date of this Agreement, Producers' Arbitration Committee, Inc., shall select such sixth member from among producers not members of any of the aforementioned five associations.

(b) Six distributors. Four of these shall be selected by the Southern California Milk Dealers Association. One of these shall be selected by the Independent Milk Distributors Association, Inc. The sixth distributor shall be selected by distributors not members of either of said associations; provided, however, that if such distributors shall not have selected a member within five days after the effective date of this Agreement, the five distributor members selected as above provided shall select such sixth member.

(c) The thirteenth member shall be selected by two-thirds vote of the twelve selected as specified in (a) and (b) above and such thirteenth member shall be the Chairman of the Board.

2. The duties of the Los Angeles Milk Industry Board in addition to those specifically set forth elsewhere in this Agreement shall be to compile statistics and make surveys of costs and methods of production and distribution in the Los Angeles market, either alone or in collaboration with other agencies engaged in similar projects; to formulate a program for improving the quality of milk and the standards of the Industry generally in the Los Angeles market; to arbitrate disputes and to engage in advertising and sales-promotion work which will further the interests of the industry.

(a) Subject to the approval of the Secretary, the Los Angeles Milk Industry Board may make such further rules, regulations and/or arrangements, not inconsistent with this Agreement or with those which have been established by the Secretary, as may be necessary to carry out the plans and principles set forth in this Agreement.

3. In the exercise of any powers or duties under this Agreement:

(a) The Los Angeles Milk Industry Board shall not be liable for any damages caused by any acts or omissions of its members, whether acting individually or collectively as a Board.

(b) No member of Los Angeles Milk Industry Board shall be liable for any damages caused by the acts or omissions of any other member.

(c) No member shall be liable for any damages caused by his own acts or omissions, unless such acts or omissions involve fraud or willful misconduct on the part of such member.

EXHIBIT E

RULES OF FAIR PRACTICES

The following practices are considered unfair and shall not be engaged in by contracting distributors or by their officers, employees, or agents:

(1) Any method or device whereby fluid milk is sold or offered for sale at a price less than stated in this agreement, whether by any discount, rebate, free service, merchandise, advertising allowance, credit for bulk fluid milk returned, loans or credits outside of the usual course of business or other valuable consideration or combined price for such milk together with another commodity sold or offered for sale, whether separately or otherwise, or whereby a subsidy is given for either business or information or assistance in procuring business; or whereby business is obtained, or sought to be obtained, by misrepresentation as to any article listed in Exhibit B.

(2) For any contracting distributor (a) to sell any fluid milk in a territory which within one year last past has been covered by him in any capacity for another distributor or (b) to cause to be sold through an agent or employee fluid milk in any territory which such agent or employee has within one year last past covered in any capacity for another distributor.

(3) The failure of any contracting distributor to invoice daily 3¢ per bottle for any bottle difference, over or under, for any milk delivery at any wholesale stop, or to settle for the same when the milk is paid for.

EXHIBIT F

CREAM BUYING PLAN

1. The plants of the contracting distributors located in the counties listed in Exhibit A, Schedule II, shall take delivery for distribution as Grade A Market Cream only of Grade A milk which is delivered from producers in the Los Angeles Cream shed. Such producers for the present are not to receive bases but shall be subject to the provisions of this cream buying plan.

2. There shall be an adjustment in each month for deliveries of milk for Grade A Market Cream by each producer, according to the quality thereof, the deductions to be made from each producer not delivering milk of the highest quality as set forth in Schedule I of this exhibit. The total deductions thus made shall be charged against each producer incurring said penalty and the total of all such deductions shall be handled in the following manner:

(a) If there be no surplus of deliveries of Grade A Milk for Grade A Market Cream above the purchases of Grade A Market Cream by distributors, in the Los Angeles Sales Area, then the total penalties shall be prorated back to the producers, including those who incurred the penalties, in proportion to the number of pounds of butterfat delivered by them to said plants, respectively.

The foregoing adjustment shall be computed for each month by the accountants of the Los Angeles Cream Clearing Association, who shall secure the necessary data from the several plants and notify them, respectively, of the resulting price adjustments to be made in the case of each producer delivering milk to each such plant for Grade A Market Cream.

(b) If there be a surplus of such deliveries to the plants over the aforesaid requirements of contracting distributors in the Los Angeles Sales Area, then the total amount of the penalties shall be added to the returns received from surplus products as provided in the next succeeding paragraph.

If at any time there be an excess of such deliveries of milk to the plants over the Grade A Market Cream requirements of the contracting distributors in the Los Angeles Sales Area, the plant or plants having such excess, shall manufacture such excess over requirements into butter or other milk products. The plants disposing of deliveries of milk in the foregoing manner shall be entitled to be reimbursed for the loss sustained (that is to say, the difference between the minimum price which they are obligated to pay producers for said milk in accordance with the provisions of this cream-buying plan, exclusive of penalties, and the gross proceeds of manufacturing such milk into butter and powdered skim). Such plants shall report the results of such manufacturing operations to the accountants, who shall cause such plants to be reimbursed out of any penalties incurred by the

producers under the provisions of the foregoing paragraph. If such penalties are not sufficient to fully reimburse such plants, the difference shall be charged back against all producers delivering milk for Grade A Market Cream to all the plants, pro rata, in accordance with their deliveries of such milk during such month. If there be any balance of penalties after reimbursing the plants disposing of milk in manufactured products as aforesaid, the remaining balance of such penalties shall be prorated back to the individual producers in a manner similar to that provided in the preceding paragraph. The foregoing adjustment shall be computed for each month by the accountants of the Los Angeles Cream Clearing Association who shall secure the necessary data from the several plants and shall notify them, respectively, of resulting price adjustments to be made in the case of each producer and of the amount to be paid to the plant or plants entitled to reimbursement.

3. The expenses of the said accountants including reasonable compensation for their services incurred in the operation of the Cream Buying Plan shall be prorated back to producers of milk for Grade A Market Cream delivering to the aforesaid plants, in proportion to the number of pounds of butterfat delivered by such producers. Such pro rata charges shall be collected by said plants from such producers supplying them and the moneys so collected paid to the accountants.

SCHEDULE I

The specifications for each class of milk for Grade A Market Cream and the deduction applicable to the several classes are as follows:

CLASS I MILK

Flavor and Odor—No. 1 or No. 2 rating:

Must be refrigerated except when delivered to plants in Santa Barbara County.

Bacterial count shall not exceed 25,000 per c.c.

If the milk has a flavor rating of No. 3, there shall be a deduction of 2 cents per pound of butterfat.

CLASS II MILK

Flavor and Odor—No. 1 or No. 2 rating:

Bacterial count shall not exceed 25,000 per c.c.

Class II milk shall be paid for at 1 cent less per pound of butterfat than Class I milk.

If the milk has a flavor rating of No. 3, there shall be a further deduction of 2 cents per pound of butterfat.

CLASS III MILK

Flavor and Odor—No. 1 or No. 2 rating:

Bacterial count shall not exceed 50,000 per c.c.

Class III milk shall be paid for at 2 cents less per pound of butterfat than Class I milk.

If the milk has a flavor rating of No. 3 there shall be a further deduction of 2 cents per pound of butterfat.

CLASS IV MILK

Flavor and Odor—No. 1 or No. 2 rating.

Bacterial count shall not exceed 150,000 per c. c.

Class IV milk shall be paid for at 4 cents less per pound of butterfat than Class I milk.

If the milk has a flavor rating of No. 3, there shall be a further deduction of 2 cents per pound of butterfat.

It is agreed between the contracting producers and the contracting distributors that any quality program for milk for Grade A Market Milk which might be developed by them through the Los Angeles Milk Industry Board and submitted to the Secretary for approval shall not be less stringent than that established herein for milk for Grade A Market Cream.

LICENSE FOR MILK

LOS ANGELES MILK SHED

I

As used in this License, the following words and phrases shall be defined as follows:

A. "Fluid Milk" means milk, cream, or any other of the articles listed in Exhibit B which are sold for consumption in the Los Angeles Sales Area. Fluid Milk shall be classified as follows:

(1) "Grade A Market Milk" means that portion of fluid milk which is derived from milk produced in the Los Angeles Milk Shed and which is sold for consumption in the Los Angeles Sales area as fluid milk other than as fluid cream.

(2) "Grade A Market Cream" means that portion of fluid milk which is derived from Grade A milk produced in the Los Angeles Cream Shed, and which is sold for consumption in the Los Angeles sales area as fluid milk, other than as whole milk.

B. "Producer" means any producer or association of producers of milk produced in the Los Angeles Milk Shed and/or the Los Angeles Cream Shed, and sold for consumption as fluid milk in the Los Angeles Sales Area.

C. "Distributor" means any of the following persons engaged in the business of handling fluid milk, irrespective of whether any such person is also a producer of milk:

(a) Pasteurizers, bottlers, or other processors of fluid milk.

(b) Persons distributing fluid milk at wholesale or retail (1) to hotels, restaurants, stores, or other establishments for consumption on the premises (2) to stores or other establishments for resale, or (3) to consumers.

(c) Persons operating stores or other establishments selling fluid milk at retail for consumption on or off the premises.

D. "Los Angeles Sales Area" means and includes the city of Los Angeles, California, and additional territory outside of the city limits of Los Angeles California, described as follows:

Beginning at a point on the coast of the Pacific Ocean where the boundary line between Ventura and Los Angeles Counties intersects said coast; thence in a northeasterly direction along the boundary line between Ventura and Los Angeles Counties to a point in the southern boundary line of Kern County; thence east along the northern boundary line of Los Angeles County to where said boundary line intersects the western boundary line of San Bernardino County; thence north along the western boundary line of San Bernardino County approximately twenty miles or where said county line jogs for point; thence east along said county line to where said line again jogs to the north, and continuing east on an extension of said line due into San Bernardino County to a point of intersection with 116°

longitude West, thence south along 116° longitude West to the southern boundary line of San Bernardino County and continuing on across Riverside County to the point where 116° Longitude West intersects the southern boundary line of Riverside County; thence west along the southern boundary line of Riverside County to a point where it intersects the eastern boundary line of Orange County; thence southwesterly along the eastern boundary line of Orange County to a point where said eastern boundary line intersects on the Pacific Coast; thence in a northwesterly direction along the Pacific Coast with its meanderings to the point of beginning; and also including the island of Santa Catalina.

E. "Los Angeles Cream Shed" means those dairy farms located in the counties of Imperial, San Louis Obispo, Tulare, Kings, Madera, Ventura, Merced, Kern, Fresno, and Santa Barbara as were producing milk for Grade A market cream on the effective date of this license, and such other dairy farms as may become entitled to produce milk for Grade A market cream, in accordance with the terms of this license; except (1) Those dairy farms producing any milk for distribution as fluid milk in said counties, and (2) those farms located in said counties which are within the Los Angeles Milk Shed as defined herein.

F. "Los Angeles Milk Shed" means those dairy farms in the counties of Los Angeles, Riverside, San Bernardino, and Orange, and also those dairy farms outside said counties as were producing milk for Grade A market milk on the effective date of this license, and such other dairy farms as may become entitled to produce milk for Grade A market milk, in accordance with the terms of this license.

G. "Los Angeles Milk Industry Board" is that Board to be organized and to have the powers and duties set forth in Exhibit D, which is attached hereto and made a part hereof.

H. "Los Angeles Cream Clearing Association" means that association (or any corporate successor thereto) composed of certain distributors who are operating separating plants in the Los Angeles Cream Shed, and supplying Grade A market cream.

I. "Secretary" means the Secretary of Agriculture of the United States.

J. "Act" means the Agricultural Adjustment Act, approved May 12, 1933, as amended.

K. "Person" means individual, partnership, corporation, association, and any other business unit.

II

Whereas, it is provided by section 8 of the Act as follows:

SEC. 8. In order to effectuate the declared policy the Secretary of Agriculture shall have power—

(3) To issue licenses permitting processors, associations of producers, and others to engage in the handling, in the current of interstate or foreign commerce, of any agricultural commodity or product thereof, or any competing commodity or product thereof. Such licenses shall be subject to such terms and conditions not in conflict with existing acts of Congress or regulations pursuant thereto as may be necessary to eliminate unfair practices or charges that prevent or tend to prevent the effectuation of the declared policy and the restoration of normal economic conditions in the marketing of such commodities or products thereof and the financing thereof * * *.

(4) To require any licensee under this section to furnish such reports as to quantities of agricultural commodities or products thereof bought and sold and the

prices thereof, and as to trade practices and charges, and to keep such systems of accounts as may be necessary for the purpose of part 2 of this title, and

Whereas, by virtue of the authority vested in the Secretary by the act, the Secretary, with the approval of the President, has issued regulations entitled "Milk Regulations, Agricultural Adjustment Administration, Series 1"; and

Whereas, pursuant to said act and to said regulations, the Secretary has determined that it is necessary to issue licenses in order to eliminate unfair practices or charges that prevent or tend to prevent (1) the effectuation of the declared policy of said act with respect to milk and its products, and (2) the restoration of normal economic conditions in the marketing of such commodity and the financing thereof; and

Whereas, the Secretary, acting under the provisions of said act, for the purpose and within the limitations therein contained, after due notice and opportunity for hearing to interested parties given pursuant to the provisions of said act, and the regulations issued thereunder, and after due consideration, has on the 16th day of November 1933 executed under his hand and the official seal of the Department of Agriculture a certain agreement entitled "Marketing Agreement for Milk—Los Angeles Milk Shed", and

Whereas, the Secretary finds that the marketing of milk for distribution as fluid milk in the Los Angeles Sales Area and the distribution of said fluid milk are in both the current of interstate commerce and the current of intrastate commerce, which are inextricably intermingled;

III

Now, therefore, the Secretary of Agriculture acting under the authority vested in him as aforesaid,

Hereby licenses each and every distributor of fluid milk for consumption in the Los Angeles Sales Area to engage in the handling in the current of interstate or foreign commerce of said fluid milk subject to the following terms and conditions:

1. The schedules governing the prices at which, and the terms and conditions under which milk shall be purchased by distributors for distribution as fluid milk shall be those set forth in Exhibit A, which is attached hereto and made a part hereof.

Payments to the Producers' Arbitration Committee, Inc., made pursuant to paragraph 5, and payments to the Los Angeles Milk Industry Board, made pursuant to paragraph 4 hereof, and like payments to the Producers' Arbitration Committee, Inc., made pursuant to membership agreements, shall, respectively, be deemed part of the price paid to producers.

2. The schedules of wholesale, resale, and retail prices at which fluid milk shall be distributed and sold by the distributors in the various parts of the Los Angeles Sales Area shall be those set forth in Exhibit B.

3. Every distributor of fluid milk shall purchase and distribute milk in accordance with the terms and conditions set forth in the Production and Surplus Control Plan set forth in Exhibit C which is attached hereto and made a part hereof.

4. (a) Every distributor shall file, prior to the fifth (5th) day of each month, with the Chairman of the Los Angeles Milk Industry

Board a statement of (a) the quantity of milk purchased from each producer and (b) as to the production of such distributor a statement of the quantities produced and sold as fluid milk.

(b) Distributors shall not purchase milk from any producer for distribution as Grade A Market Milk, unless such producer authorizes the purchasing distributor to pay over to the Los Angeles Milk Industry Board such amount as may be determined by the Los Angeles Milk Industry Board, provided, however, that such amount shall not exceed $\frac{1}{4}\%$ for each pound of butterfat contained in the milk purchased by such distributor. Distributors having production of their own shall deduct a like amount for each pound of butterfat contained in milk produced and sold by them and pay the same to the Los Angeles Milk Industry Board. All distributors, whether such distributors have production of their own or not, shall pay to the aforesaid Los Angeles Milk Industry Board as distributors an amount equal to that paid for deducted by them, as the case may be, as aforesaid. The Board shall use said funds for the purposes specified in Exhibit D which is attached hereto and made a part hereof.

(c) Distributors shall not purchase milk for distribution as Grade A Market Milk from producers not members of the California Milk Producers Association, Independent Milk Producers Association, the Los Angeles County Natural Milk Producers Association, the Los Angeles Mutual Dairymen's Association, the Southern California Bottled Raw Milk Association, the Dairymen's Association, Inc., of Riverside, or the Orange County Milk Producers, Inc., unless such producers authorize the purchasing distributor to pay over to the Los Angeles Milk Industry Board an amount, for each pound of butterfat contained in milk purchased from said independent non-member producers, equal to the average amount which the members of such associations are then authorizing the distributors to pay over to such associations on behalf of their respective members, provided, however, that such deduction shall in no event exceed one cent per pound of butterfat. Distributors having production of their own of milk for distribution as Grade A Market Milk and who are not members of the aforesaid associations of producers, for the purposes of this paragraph, shall be deemed to have sold such milk as a producer and purchased such milk as a distributor and shall make payment to the Los Angeles Milk Industry Board accordingly.

Said average amount shall be determined for each month by the Los Angeles Milk Industry Board by (1) multiplying the amount per pound of butterfat authorized to be deducted in respect to each such Association by the number of pounds for which the deduction is so authorized, (2) adding the several amounts thus arrived at, and (3) dividing the resulting sum by the total number of pounds for which members of said Associations of producers have in the aggregate authorized deductions, the resulting figure being the average amount to be deducted for said month in the case of such nonmember producers.

The sum so paid shall be kept as a separate fund by said Los Angeles Milk Industry Board for the purpose of securing to said producers not members of the above-mentioned producers associations, advertising, educational, credit loss, and other benefits similar to those which are secured by the members of the aforesaid producers associations by virtue of their like payments to said producers' associations.

Los Angeles Milk Industry Board shall disburse such funds for the purposes hereinabove provided. Los Angeles Milk Industry Board shall keep separate books and records in a form satisfactory to the Secretary pertaining to such funds, which said books and records of the Los Angeles Milk Industry Board shall be subject to examination of the Secretary during the usual hours of business. Los Angeles Milk Industry Board shall, from time to time, furnish to the Secretary such information as the Secretary may require.

(d) The deductions which are thus made, pursuant to paragraphs 4 (b) and (c) shall be paid to the Los Angeles Milk Industry Board at the time provided in this license for making payment to producers for milk purchased.

5. (a) Distributors shall not purchase milk for distribution as Grade A Market Milk from any producer who is not a member of any of the associations of producers listed in Paragraph 4 unless such producer authorizes the distributor to whom such producer is delivering milk to deduct, or cause to be deducted by the particular association of producers of which any such producer is a member, each month, the following (1) for the deliveries of such producer in excess of such part thereof as was classified as base milk pursuant to the provisions of Exhibit C for such month, a sum equal to the difference between the base price for said milk and the surplus price for said milk, both prices to be determined pursuant to the provisions of Exhibit A, Schedule I, and of Exhibit A, Schedule III, and (2) for that part of the deliveries of each such producer not in excess of the producer's base, determined pursuant to the provisions of Exhibit C, the difference between the base price payable for said milk pursuant to the provisions of the aforesaid schedules of Exhibit A and the adjusted base price determined according to the provisions of the said schedules of Exhibit A and the provisions of Exhibit C. Every month such distributor or every such association of producers shall pay the said sums so deducted to the Producers' Arbitration Committee, Inc., as provided in Exhibit C, for the purpose of equitably allocating the loss involved in handling surplus milk.

(b) Distributors shall not purchase milk for distribution as Grade A Market Milk from any producer who is not a member of any of the associations of producers listed in Paragraph 4 unless such producer authorizes the distributor to whom such producer is delivering milk to deduct, each month, the following: (1) For the deliveries of such producer in excess of such part thereof as was classified as base milk pursuant to the provisions of Exhibit C for such month, a sum equal to the difference between the base price for said milk and the surplus price for said milk, both prices to be determined pursuant to the provisions of Exhibit A, Schedule I, and of Exhibit A, Schedule III; and (2) for that part of the deliveries of each such producer not in excess of the producer's base determined pursuant to the provisions of Exhibit C, the difference between the base price payable for said milk pursuant to the provisions of the aforesaid schedules of Exhibit A and the adjusted base price determined according to the provisions of said schedules of Exhibit A and the provisions of Exhibit C. Every such distributor shall pay the said sums so deducted to the Producers' Arbitration Committee, Inc., as provided in Exhibit C for the purpose of equitably allocating the loss involved in handling surplus milk.

(c) Every distributor having production of his own of milk for distribution as Grade A Market Milk shall pay each month the following sums to the Producers' Arbitration Committee, Inc., as provided in Exhibit C for the purpose of equitably allocating the loss of handling surplus milk: (1) For such production of such distributor in excess of such part thereof as was classified as base milk pursuant to the provisions of Exhibit C for such month, a sum equal to the difference between the base price of said milk and the surplus price of said milk, both prices to be determined pursuant to the provisions of Exhibit A, Schedule I and Schedule III; and (2) for that part of the production of each such distributor not in excess of the base determined pursuant to the provisions of Exhibit C, the difference between the base price payable for said milk pursuant to the provisions of the said schedules of Exhibit A and the adjusted base price determined according to the provisions of the said schedules of Exhibit A and the provisions of Exhibit C.

6. Every distributor of fluid milk shall purchase and distribute milk in accordance with the terms and conditions set forth in the Cream Buying Plan which is attached hereto as Exhibit F and made a part hereof.

7. The rules of fair practices set forth in Exhibit E which is attached hereto and made a part hereof shall be the rules of fair practices in the Los Angeles Sales Area.

8. Distributors shall severally maintain systems of accounts which accurately reflect the true account and condition of their respective businesses. Their respective books and records shall, during the usual hours of business, be subject to the examination of the Secretary to assist him in the furtherance of his duties with respect to this License. Distributors shall, from time to time, furnish such information to the Secretary as the Secretary may request, including information on and in accordance with forms to be supplied by him. All information obtained by or furnished to the Secretary pursuant to this paragraph shall remain the confidential information of the Secretary, and shall not be disclosed by him except upon lawful demand made by the President, or by either House of Congress, or any committee thereof, or by any court of competent jurisdiction. The Secretary, however, may combine and publish the information obtained from distributors in the form of general statistical studies or data. The Secretary shall issue regulations and prescribe penalties to be imposed in the event of any violation of the confidences or trust imposed hereby.

9. Every distributor shall purchase and sell for consumption as fluid milk and distribute for consumption as fluid milk only such milk as complies with the standards governing the production, receiving, transportation, processing, bottling, and distribution of fluid milk sold or distributed in the Los Angeles Sales Area, established pursuant to and in accordance with State, county, and city health ordinances and regulations of any of the municipalities in which said milk is sold, and also in the case of milk purchased for distribution as Grade A market cream—those which are set forth in Exhibit F of this License. The standards governing the production, receiving, transportation, processing, bottling, and distribution of fluid milk, sold or distributed in the Los Angeles Sales Area shall be those established by the State, county, and city health ordinances and regulations, of any of the

municipalities in which said milk is sold, and in addition such other requirements, not conflicting with such ordinances and regulations, as may from time to time be established by the Los Angeles Milk Industry Board, with the approval of the Secretary, and also in the case of milk purchased for distribution as Grade A Market Cream—those which are set forth in Exhibit F of this Agreement.

10. No distributor shall knowingly purchase fluid milk from or process or distribute for or sell fluid milk to any other distributor who is violating any provision of this License.

11. If any provision of this License is declared invalid or the applicability thereof to any person, circumstance, or thing is held invalid, the validity of the remainder of this License and/or applicability thereof to any other person, circumstance, or thing shall not be affected thereby.

12. The Secretary herewith gives notice that:

(a) The terms and conditions of this License are hereby determined to be reasonable only in the light of conditions now prevailing in the Los Angeles Milk Shed and are not to be regarded as a precedent for the issuance of licenses in connection with other milk sheds or for any future modification or suspension of this License; and

(b) The Secretary reserves the privilege of approving a blanket license, pursuant to Section 8 (3) of the Act, for all milk sheds, which blanket license may make specific modifications for any particular designated milk shed to conform to the conditions then prevailing in such specific milk shed.

13. Nothing herein contained shall be construed in derogation of the rights of the Secretary to exercise any powers granted him by the Act, and, in accordance with such powers, to act in the premises whenever he shall deem it advisable.

14. Distributors shall purchase all of their milk requirements of Grade A Market Milk and Grade A milk for standardization purposes, provided such milk meets all of the health requirements provided for in this license, from producers having established bases in the Los Angeles Milk Shed. Distributors shall purchase all of their milk requirements of Grade A Market Cream from the Grade A milk producers in the Los Angeles Cream Shed, provided such milk meets all of the health requirements provided for in this License.

In witness whereof, I, Henry A. Wallace, Secretary of Agriculture, do hereby issue this License in the City of Washington, D.C., on this 16th day of November 1933, and pursuant to the provisions hereof declare this license to be effective on and after 12:01 a.m. Eastern Standard Time November 20, 1933.

H A Wallace

Secretary of Agriculture.

EXHIBIT A
PRICES TO BE PAID PRODUCERS

SCHEDULE I

PRICES FOR GRADE A MARKET MILK DELIVERED IN BULK (EXCEPT MILK DELIVERED TO PLANTS IN THE COUNTIES AND FOR THE PURPOSES SET FORTH IN SCHEDULE II)

(a) The prices (herein termed base prices) to be paid by distributors for Grade A Market Milk, delivered in bulk f.o.b. distributors' processing plants in Los Angeles, shall be determined in accordance with the following schedule, which provides that changes in the Los Angeles market quotations for 92 score butter shall result in a change in the base price to be paid per pound of butterfat, only after a definite discrepancy between the butter quotations and the existing price base appears. Such discrepancy shall be deemed to have appeared whenever such closing market quotation shall have moved into the section next below or next above the existing quotations, as provided in the following schedule, and shall have remained in such section for seven consecutive days. In such event, corresponding revisions in the base price shall be made on the second day next succeeding such seven-day period. Provided, however, that if, in the opinion of the Los Angeles Milk Industry Board a revision in the base price resulting from making Section 1 applicable may not be justified by economic conditions, the Los Angeles Milk Industry Board may postpone such revision for not exceeding ten days following such seven-day period for the purpose of making an economic survey and report to the Secretary. Following such economic survey and report, the Los Angeles Milk Industry Board may, with the approval of the Secretary, further postpone such revision for such time as it may recommend and the Secretary may approve.

	Los Angeles market quotation 92 score butter	Total base price per pound but- terfat
Section 1.....	\$0. 00 - \$0. 20	\$0. 45
Section 2.....	. 201- . 25	. 51
Section 3.....	. 251- . 30	. 61

(b) Distributors, for the purpose of standardizing milk for market, shall purchase and use only Grade A milk, purchased at the above prices.

(c) The foregoing base prices are payable by distributors in respect of all milk delivered to them, but in accounting for the same they shall—

(1) On all of such deliveries of producers not in excess of such producer's base as determined under the provisions of Exhibit C, pay to each producer the foregoing prices adjusted as provided in Exhibit C, and pay the difference between the base price and the adjusted base price to Producers' Arbitration Committee, Inc., as provided under Paragraphs 5(a) and 5 (b) of this license, except in those cases where the distributor is paying the full base price to any of the associations of producers listed in Paragraph 4 of this license and such association of producers is itself paying to Producers' Arbitration Committee, Inc., the difference between the adjusted base price and the base price determined as aforesaid.

(2) On all such deliveries in excess of producer's base determined as aforesaid, pay to each producer the surplus price, as established pursuant to the provisions of this exhibit hereinafter set forth, and pay to the Producers' Arbitration Committee, Inc., the difference between the base price and the surplus price, except in those cases where the distributor is paying the full base price to any of the associations of producers listed in Paragraph 4 of this license and such association of producers is itself paying to Producers' Arbitration Committee, Inc., the difference between the base price and the surplus price determined as aforesaid.

(3) Distributors having production of their own shall as to such production pay monthly to Producers' Arbitration Committee, Inc., the difference between the base price and the adjusted base price as provided under paragraph 5 (c) of this License; and shall on such production in excess of such distributors' base as a producer pay monthly to the Producers' Arbitration Committee, Inc., the difference between the base price and the surplus price.

(d) *Surplus price.*—Milk delivered by producers to distributors in excess of quantities representing the base of each such producer shall be paid for at the surplus price, and distributors having production of their own may retain on account of such production in excess of their established bases as producers the surplus price. The surplus price shall be the monthly average of the daily quotation for ninety-two score butter prevailing on the Los Angeles market during the month in which such milk is to be accounted for.

(e) *Where the milk passes through a country receiving station* the following deductions per pound of butterfat shall be made.

A. The cost of transportation from the country receiving station to Los Angeles according to truck hauling tariff of the California State Railway Commission plus an allowance of four cents (4) per pound butterfat for preparation of such shipment.

B. If delivery is taken at the producer's ranch, in addition to the foregoing deduction, the actual reasonable cost of hauling to the country receiving station, not exceeding three cents (3) per pound butterfat.

SCHEDULE II

PRICES FOR MILK DELIVERED IN BULK TO PLANTS IN CERTAIN COUNTIES FOR SEPARATION INTO CREAM AND SKIMMED MILK AND/OR FOR PROCESSING INTO BUTTERMILK, CONDENSED MILK, COTTAGE CHEESE, OR SKIMMED MILK POWDER

1. The minimum buying price per pound of butterfat to be paid by the processing plants in the several counties listed below for milk

delivered in bulk for the purposes set forth in the heading of this Schedule II shall be:

(a) The monthly average of the daily quotations in Los Angeles for 92-score butter for the month in which deliveries are made to such plant, plus the premiums which may prevail according to the schedules set forth in paragraphs (b) and (c) below in the several counties listed below when the quotations of Section 1, Section 2, and Section 3, respectively, of Exhibit A and revised base prevail.

	When section 1 prevails	When section 2 prevails	When section 3 prevails
(b) County:			
Merced.....	\$0. 06	\$0. 09	\$0. 13
Fresno.....	. 06½	. 09½	. 13½
Tulare.....	. 06¾	. 09¾	. 13¾
Kings.....	. 06¾	. 09¾	. 13¾
Santa Barbara.....	. 06¾	. 09¾	. 13¾
Imperial.....	. 06¾	. 09¾	. 13¾
Kern.....	. 07¾	. 10¾	. 14¾

(c) In addition to the above premiums, add the following premiums for solids-not-fat values. When the average monthly carload price at Los Angeles of Roller Process powdered skim milk, as determined by the Los Angeles Milk Industry Board from available data, is—

- 3¼ cents per pound add ½ cent per pound of butterfat
- 3½ cents per pound add 1 cent per pound of butterfat
- 3¾ cents per pound add 1½ cents per pound of butterfat
- 4 cents per pound add 2 cents per pound of butterfat
- 4¼ cents per pound add 2½ cents per pound of butterfat
- 4½ cents per pound add 3 cents per pound of butterfat
- 4¾ cents per pound add 3½ cents per pound of butterfat
- 5 cents per pound add 4 cents per pound of butterfat
- 5¼ cents per pound add 4½ cents per pound of butterfat
- 5½ cents per pound add 5 cents per pound of butterfat
- 5¾ cents per pound add 5½ cents per pound of butterfat
- 6 cents per pound add 6 cents per pound of butterfat

2. The foregoing prices shall be subject to the terms and conditions set forth in the Cream Buying Plan which is attached hereto as Exhibit F.

SCHEDULE III

PRICES FOR RAW GRADE "A" MARKET MILK DELIVERED IN BOTTLES TO DISTRIBUTORS (EXCEPT TO STORES)

(a) The following schedule of minimum buying prices to be paid to producers by distributors (except stores) for bottled Grade "A" raw milk shall prevail when the conditions set forth in Sections 1, 2, and 3, respectively, of Exhibit A and revised base price prevail:

	Price paid to producers per quart
When conditions of Section 1 prevail.....	\$0. 05¼
When conditions of Section 2 prevail.....	. 06
When conditions of Section 3 prevail.....	. 06¾

(b) Such milk shall be delivered by producers to distributors' city processing plant bottled and iced in cases. Distributors will furnish bottles, cases, and caps.

(c) For the purpose of making the adjustments provided for in this Schedule III and in Exhibit C, the foregoing prices per quart of bottled milk shall be reduced to base prices per pound of butterfat (1) on the basis that each such quart contains milk with 4 percent butterfat content, and (2) so as to eliminate from the said adjustment all extra cost relating to the bottling and handling of the bottle product. Accordingly, the base price of such milk shall be determined in the following manner.

(1) Each quart of milk shall be taken to be the equivalent of .086 pounds of butterfat.

(2) Multiply the total number of quarts delivered by .086; the resulting figure will be the number of pounds of butterfat deemed to have been delivered.

(3) The base price per pound of butterfat shall be—

When conditions of Section 1 prevail.....	\$0. 45
When conditions of Section 2 prevail.....	. 51
When conditions of Section 3 prevail.....	. 61

(d) The prices set forth in paragraph A are payable by distributors in respect of all milk delivered to them, but in accounting for the same they shall—

(1) On all of the deliveries of such producer not in excess of such producer's base as determined under the provisions of Exhibit C, pay to each producer the difference between the foregoing prices per quart of bottled milk as set forth in paragraph (a) for all quarts delivered and the base price per pound of butterfat as set forth in paragraph (c) for all pounds of butterfat delivered; and pay each producer the base price adjusted as provided in Exhibit C, and pay the difference between the base price and the adjusted base price to Producers' Arbitration Committee, Inc., as provided under Paragraphs 5(a), 5(b), and 5(c) of this license, except in those cases where the distributor is paying the full base price to any of the associations of producers listed in paragraph 4 of this license and such association of producers is itself paying to Producers' Arbitration Committee, Inc., the difference between the base price and the adjusted base price determined as aforesaid.

(2) On all deliveries in excess of producer's base determined as aforesaid, pay to each producer the difference between the foregoing prices per quart of bottled milk as set forth in paragraph (a) for all quarts delivered and the base price per pound of butterfat as set forth in paragraph (c), for all pounds of butterfat delivered; and pay each producer the surplus price, as established pursuant to the provisions of this exhibit hereinafter set forth, and pay to the Producers' Arbitration Committee, Inc., the difference between the base price and the surplus price, except in those cases where the distributor is paying the full base price to any of the associations of producers listed in paragraph 4 of this license and such association of producers is itself paying to Producers' Arbitration Committee, Inc., the difference between the base price and the surplus price determined as aforesaid.

Surplus price.—Milk delivered by producers to distributors in excess of quantities representing the base of each such producer shall be paid for at a surplus price to be established as follows:

The surplus price shall be the monthly average of the daily quotation for 92 score butter prevailing on the Los Angeles Market for the month in which deliveries by producers have been made.

EXHIBIT B
SELLING PRICES

1. *General provisions applicable to all schedules of the exhibit.*—The minimum prices set forth in the following schedules are based on milk containing an average butterfat content of 4%, subject to a tolerance for normal fluctuations of 0.2 of one percent up or down for any 30-day period.

2. Any distributor, who during any 30-day period, has sold milk in bulk or bottles averaging a butterfat content in excess of 4.2%, but not in excess of 4.5%, shall for the next succeeding 30-day period increase the selling price stipulated in the following schedules for like quality milk at the rate of 1¢ per quart. Any distributor who, during any 30-day period, has sold milk in bulk or bottles averaging a butterfat content in excess of 4.5% but not in excess of 5% shall, in addition to the above increase, increase the selling price for like quality at the rate of 1¢ per quart; and if the aforesaid average butterfat content shall exceed 5%, the distributor shall increase selling prices for like quality milk by an additional 1¢ for each additional 0.5 of one percent of butterfat contained in said milk over 5%.

3. Prices are for bottled milk unless otherwise specified.

4. The following price schedules do not include any occupational or sales tax imposed by the laws of any State, nor shall any deduction from said price schedules be made in any case therefor.

5. Peddlers shall sell all products at the established retail and wholesale prices respectively.

6. Sales of milk by Distributors to any unemployment relief agency may be made at prices below those set forth in Exhibit B.

7. Sales of articles in containers shall be made only in containers of the sizes and types specified, and where a grade and/or percentage of butterfat content is specified, only at the specified grade and/or percentage of butterfat.

SCHEDULE I

LOS ANGELES SALES DISTRICT

(Includes all territory in the Los Angeles Sales Area except that specified as included in the San Bernardino Sales District and the Orange County Sales District.)

The following minimum wholesale, resale, and retail prices shall be in effect when the Los Angeles Market quotation of 92-score butter is such that Section 1 of Exhibit A and revised base is in effect:

	Wholesale prices	Store selling prices	Home delivered prices
Milk, grade A, pasteurized:			
10-gallon cans	\$2. 50		
3-gallon cans	. 80		
2-gallon cans	. 55		
1-gallon cans	. 30		
Quarts	. 07½	\$0. 09	\$0. 10
Pints	. 05	. 06	. 07
Third quarts	. 04		
Half pints	. 03		
Raw milk, grade A:			
Quarts	. 07½	. 09	. 10
Pints	. 05	. 06	. 07
Third quarts	. 04		
Half pints	. 03		
Guaranteed milk:			
Quarts	. 11	. 12	. 13
Pints	. 06	. 07	. 08
Third quarts	. 05½		
Half pints	. 04½		
Raw milk, certified:			
Quarts	. 13	. 15	. 15
Pints	. 08	. 10	. 10
Third quarts	. 06		
Half pints	. 05		
Chocolate drink: Quarts			
	. 07½	. 09	. 10
Coffee cream, 22 percent:			
10-gallon cans	8. 50		
3-gallon cans	2. 70		
2-gallon cans	1. 80		
Quarts	. 25	. 35	. 35
Pints	. 15	. 20	. 22
Half pints	. 09	. 11	. 12
Table cream, 27 percent:			
10-gallon cans	10. 00		
3-gallon cans	3. 15		
2-gallon cans	2. 10		
Quarts	. 28	. 40	. 40
Pints	. 17	. 22	. 25
Half pints	. 11	. 13	. 14
Whipping cream, 38 percent:			
10-gallon cans	14. 00		
3-gallon cans	4. 65		
2-gallon cans	3. 10		
Quarts	. 40	. 60	. 60
Pints	. 27	. 35	. 37
Half pints	. 15	. 18	. 20
Sour cream:			
Gallon	1. 00		
Half pints	. 08	. 10	. 11
Churned buttermilk:			
10-gallon cans	2. 00		
3-gallon cans	. 75		
2-gallon cans	. 50		
1-gallon cans	. 30		
Quarts	. 07½	. 09	. 10
Third quarts	. 04		
Half pints	. 03		
Skim milk:			
10-gallon cans	1. 40		
3-gallon cans	. 32		
1-gallon cans	. 16		
Quarts	. 06	. 07	. 08
Creamed cottage cheese:			
Pounds bulk	. 11	. 15	
Cartons or jars, 10 ounces or less	. 08	. 10	. 10

SCHEDULE II

LOS ANGELES SALES DISTRICT

The following minimum wholesale, resale, and retail prices shall be in effect when the Los Angeles Market quotations of 92 score butter is such that Section 2 of Exhibit A and revised base is in effect:

	Wholesale prices	Store selling prices	Home delivered prices
Milk, Grade A, pasteurized:			
10-gallon cans	\$2. 85		
3-gallon cans	. 90		
2-gallon cans	. 65		
1-gallon can	. 34		
Quarts	. 08½	\$0. 10	\$0. 11
Pints	. 06		
Third quarts	. 04½		
Half pints	. 03½		
Raw milk, Grade A:			
Quarts	. 08½	. 10	. 11
Pints	. 06	. 07	. 08
Third quarts	. 04½		
Half pints	. 03½		
Guaranteed milk:			
Quarts	. 12	. 13	. 14
Pints	. 07	. 08	. 09
Third quarts	. 06		
Raw milk, certified:			
Quarts	. 14	. 16	. 16
Pints	. 09	. 11	. 11
Third quarts	. 06½		
Half pints	. 05½		
Chocolate drink, quarts	. 08½	. 10	. 11
Coffee cream, 22 percent:			
10-gallon cans	9. 50		
3-gallon cans	3. 20		
2-gallon cans	2. 20		
Quarts	. 30	. 38	. 40
Pints	. 17	. 22	. 24
Half pints	. 10	. 12	. 13
Table cream, 27 percent:			
10-gallon cans	11. 50		
3-gallon cans	3. 65		
2-gallon cans	2. 50		
Quarts	. 33	. 43	. 45
Pints	. 19	. 24	. 27
Half pints	. 12	. 14	. 15
Whipping cream:			
10-gallon cans	15. 50		
3-gallon cans	5. 50		
2-gallon cans	3. 65		
Quarts	. 48	. 65	. 68
Pints	. 30	. 38	. 40
Half pints	. 17	. 20	. 22
Sour cream:			
Gallon	1. 10		
Half pints	. 09	. 11	. 12

	Wholesale prices	Store selling prices	Home delivered prices
Churned buttermilk:			
10-gallon cans	\$2. 40		
3-gallon cans	. 85		
2-gallon cans	. 60		
1-gallon cans	. 34		
Quarts	. 08½	\$0. 10	\$0. 11
Third quarts	. 04½		
Half pints	. 03½		
Skim milk:			
10-gallon cans	1. 60		
3-gallon cans	. 55		
2-gallon cans	. 40		
1-gallon cans	. 20		
Quarts	. 07	. 08	. 09
Creamed cottage cheese:			
Pounds, bulk	. 12	. 16	
Cartons or jars, 10 ounces or less	. 09	. 11	. 11

SCHEDULE III

LOS ANGELES SALES DISTRICT

The following minimum wholesale, resale, and retail prices shall be in effect when the Los Angeles Market quotation of 92-score butter is such that Section 3 of Exhibit A and revised base is in effect:

	Wholesale prices	Store selling prices	Home delivered prices
Milk, Grade A:			
10-gallon cans	\$3. 15		
3-gallon cans	1. 00		
2-gallon cans	. 72		
1-gallon cans	. 38		
Quarts	. 09½	\$0. 11	\$0. 12
Pints	. 07	. 08	. 09
Third quarts	. 05		
Half pints	. 04		
Raw milk, Grade A:			
Quarts	. 09½	. 11	. 12
Pints	. 07	. 08	. 09
Third quarts	. 05		
Half pints	. 04		
Guaranteed milk:			
Quarts	. 13	. 14	. 15
Pints	. 08	. 09	. 10
Third quarts	. 06½		
Half pints	. 05½		
Raw milk, certified:			
Quarts	. 15	. 17	. 17
Pints	. 10	. 12	. 12
Third quarts	. 07		
Half pints	. 06		
Chocolate drink, quarts	. 09½	. 11	. 12

	Wholesale prices	Store selling prices	Home delivered prices
Coffee cream, 22 percent:			
10-gallon cans	\$11. 00	-----	-----
3-gallon cans	3. 55	-----	-----
2-gallon cans	2. 45	-----	-----
Quarts	. 34	\$0. 42	\$0. 44
Pints	. 19	. 25	. 27
Half pints	. 11	. 13	. 14
Table cream, 27 percent:			
10-gallon cans	13. 00	-----	-----
3-gallon cans	4. 10	-----	-----
2-gallon cans	2. 80	-----	-----
Quarts	. 40	. 50	. 52
Pints	. 21	. 26	. 29
Half pints	. 13	. 15	. 16
Whipping cream, 38 percent:			
10-gallon cans	18. 00	-----	-----
5-gallon cans	6. 15	-----	-----
2-gallon cans	4. 10	-----	-----
Quarts	. 53	. 70	. 73
Pints	. 36	. 44	. 46
Half pints	. 19	. 22	. 24
Sour cream:			
Gallon	1. 25	-----	-----
Half pints	. 10	. 12	. 13
Churned buttermilk:			
10-gallon cans	2. 70	-----	-----
3-gallon cans	. 95	-----	-----
2-gallon cans	. 70	-----	-----
1-gallon cans	. 38	-----	-----
Quarts	. 09½	. 11	. 12
Third quarts	. 05	-----	-----
Half pints	. 04	-----	-----
Skim milk:			
10-gallon cans	1. 80	-----	-----
3-gallon cans	. 65	-----	-----
2-gallon cans	. 48	-----	-----
1-gallon cans	. 25	-----	-----
Quarts	. 08	. 09	. 10
Creamed cottage cheese:			
Pound, bulk	. 13	. 17	-----
Cartons or jars, 10 ounces or less	. 09	. 11	. 11

SCHEDULE IV

SAN BERNARDINO SALES DISTRICT

The San Bernardino District includes all portions of Riverside and San Bernardino counties which are within the Los Angeles Sales Area as described in Paragraph D of this License, together with such towns and rural districts in Los Angeles County as are in whole or in part within a seven-mile radius, measured from the city hall of Pomona, Calif.

The following minimum wholesale, resale, and retail prices shall be in effect when the Los Angeles Market quotation of 92-score butter is such that Section 1 of Exhibit A and revised base is in effect:

Grade
10-g
3-g
2-g
1-g
Qua
Pin
Th
Ha
Ga
Guar
Qu
Pin
Raw m
Qu
Pin
Th
Ha
Choco
Table c
3-g
2-g
Qu
Pin
Ha
Whippi
3-g
2-g
Qu
Pin
Hal
Sour cre
Gal
Hal
Churned
10-g
3-g
2-g
1-g
Qua
Th
Hal
Skim mi
10-g
3-g
2-g
1-g
Qua
Creamed
Pou
Cart
This pri
NOTE:
prices for
wholesale
percent r
The p
Springs

	Wholesale prices	Store selling prices	Home delivered prices
Grade A pasteurized and raw milk:			
10-gallon cans.....	\$2. 50		
3-gallon cans.....	. 50		
2-gallon cans.....	. 35		
1-gallon cans.....	. 30		
Quarts.....	. 08	\$0. 10	\$0. 10
Pints.....	. 06	. 07	. 07
Third quarts.....	. 04		
Half pints.....	. 03½		
Gallons, bulk ¹.....	. 35		
Guaranteed milk:			
Quarts.....	. 11	. 13	. 13
Pints.....	. 07	. 08	. 08
Raw milk, certified:			
Quarts.....	. 13	. 15	. 15
Pints.....	. 08	. 10	. 10
Third quarts.....	. 06		
Half pints.....	. 05		
Chocolate drink, quarts.....	. 08	. 10	. 10
Table cream, 25 percent:			
3-gallon cans.....	2. 90		
2-gallon cans.....	1. 95		
Quarts.....	. 30	. 36	. 36
Pints.....	. 17	. 25	. 25
Half pints.....	. 11	. 14	. 14
Whipping cream, 38 percent:			
3-gallon cans.....	4. 65		
2-gallon cans.....	3. 10		
Quarts.....	. 40	. 60	. 60
Pints.....	. 27	. 37	. 37
Half pints.....	. 15	. 20	. 20
Sour cream:			
Gallons.....	1. 00		
Half pints.....	. 08	. 11	. 11
Churned buttermilk:			
10-gallon cans.....	2. 00		
3-gallon cans.....	. 75		
2-gallon cans.....	. 50		
1-gallon cans.....	. 30		
Quarts.....	. 08	. 10	. 10
Third quarts.....	. 04		
Half pints.....	. 03½		
Skim milk:			
10-gallon cans.....	1. 40		
3-gallon cans.....	. 45		
2-gallon cans.....	. 32		
1-gallon cans.....	. 16		
Quarts.....	. 06		. 08
Creamed cottage cheese:			
Pounds, bulk.....	. 11	. 15	
Cartons or jars, 10 ounces or less.....	. 08	. 10	. 10

¹ This price applies only to bulk milk sold on cash-and-carry basis at creamery or dairy.

NOTE.—Prices for Beaumont, Banning, Palm Springs, Indio, and Coachella; prices for Arrowhead, Big Bear, Crestline, and other mountain resorts, use wholesale prices plus motor freight schedule; interprice to licensed dairies, a 10 percent reduction from all wholesale prices will be made.

The prices listed below will apply for Beaumont, Banning, Palm Springs, Coachella, and Indio:

	Wholesale prices	Minimum store selling prices	Minimum home delivered prices
Grade A pasteurized and raw milk:			
10-gallon cans	\$3. 00	-----	-----
3-gallon cans	1. 00	-----	-----
2-gallon cans	. 65	-----	-----
1-gallon cans	. 35	-----	-----
Quarts	. 11	\$0. 14	\$0. 14
Pints	. 06	. 08	. 08
Third quarts	. 04	-----	-----
Half pints	. 03½	-----	-----
Guaranteed milk:			
Quarts	. 14	. 17	. 17
Half pints	. 04	. 06	. 06
Certified milk:			
Quarts	. 18	. 23	. 23
Pints	. 10	. 13	. 13
Half pints	. 05	. 07	. 07
Chocolate drink, quarts	. 09	. 12	. 12
Table cream, 25 percent:			
3-gallon cans	3. 40	-----	-----
2-gallon cans	2. 35	-----	-----
Quarts	. 37	. 43	. 43
Pints	. 21	. 29	. 29
Half pints	. 13	. 16	. 16
Whipping cream, 38 percent:			
3-gallon cans	5. 00	-----	-----
2-gallon cans	3. 50	-----	-----
Quarts	. 58	. 70	. 70
Pints	. 38	. 42	. 42
Half pints	. 18	. 23	. 23
Buttermilk, churned:			
10-gallon cans	2. 75	-----	-----
Gallons	. 35	-----	-----
Quarts	. 10	. 12	. 12
Skim milk:			
10 gallons or more	1. 75	-----	-----
Gallons	. 20	-----	-----
Quarts	. 07	. 09	. 09
Creamed cottage cheese:			
Pounds, bulk	. 13	. 17	-----
Cartons or jars, 10 ounces or less	. 10	. 12	. 12

SCHEDULE V

SAN BERNARDINO DISTRICT

The San Bernardino District includes all portions of Riverside and San Bernardino counties which are within the Los Angeles Area as described in Paragraph D of this License, together with such towns and rural districts in Los Angeles County as are wholly or in part within a seven-mile radius, measured from the city hall of Pomona, Calif.

The following minimum wholesale, resale, and retail prices shall be in effect when the Los Angeles Market quotation of 92 score butter is such that section 2 of Exhibit A and revised base is in effect:

Grade A
10-gal
3-gal
2-gal
1-gal
Qua
Pint
Thir
Half
Gall
Guarant
Qua
Pint
Raw milk
Qua
Pint
Thir
Half
Gall
Whipping
3-gal
2-gal
Qua
Pint
Half
Whipping
3-gal
2-gal
Qua
Pint
Half
Sour Cream
Gallon
Half
Churned
10-gal
3-gal
2-gal
1-gal
Qua
Pint
Thir
Half
Skim Milk
10-gal
3-gal
2-gal
1-gal
Qua
Pint
Thir
Half
Creamed C
Pound
Carton
This price is
Price for Am
Case 48
to mile.

	Wholesale prices	Store selling prices	Home delivered prices
Grade A pasteurized and raw milk:			
10-gallon cans	\$2. 85		
3-gallon cans	. 90		
2-gallon cans	. 65		
1-gallon cans	. 34		
Quarts	. 09	\$0. 11	\$0. 11
Pints	. 07	. 08	. 08
Third quarts	. 04½		
Half pints	. 03½		
Gallons, bulk ¹	. 40		
Guaranteed milk:			
Quarts	. 12	. 14	. 14
Pints	. 08	. 09	. 09
Raw milk, certified:			
Quarts	. 14	. 16	. 16
Pints	. 09	. 11	. 11
Third quarts	. 06½		
Half pints	. 05½		
Chocolate drink: Quarts	. 09	. 11	. 11
Table cream, 25 percent:			
3-gallon cans	3. 10		
2-gallon cans	2. 10		
Quarts	. 33	. 40	. 40
Pints	. 19	. 27	. 27
Half pints	. 12	. 15	. 15
Whipping cream, 38 percent:			
3-gallon cans	5. 50		
2-gallon cans	3. 65		
Quarts	. 48	. 68	. 68
Pints	. 30	. 40	. 40
Half pints	. 17	. 22	. 22
Sour Cream:			
Gallons	1. 10		
Half pints	. 09	. 12	. 12
Churned Buttermilk:			
10-gallon cans	2. 40		
3-gallon cans	. 85		
2-gallon cans	. 60		
1-gallon cans	. 34		
Quarts	. 09	. 11	. 11
Third quarts	. 04½		
Half pints	. 03½		
Skim Milk:			
10-gallon cans	1. 50		
3-gallon cans	. 55		
2-gallon cans	. 40		
1-gallon cans	. 20		
Quarts	. 07		. 09
Creamed Cottage Cheese:			
Pounds, bulk	. 12	. 16	
Cartons or jars, 10-oz. or less	. 09	. 11	. 11

¹ This price applied only to bulk milk sold on cash and carry basis at creamery or dairy.

Prices for Arrowhead, Big Bear, Crestline, and other mountain resorts, use wholesale prices plus Motor Transit Freight Schedule; Inter-price to licensed dairies, a 10% reduction from all wholesale prices will be made.

The prices listed below will apply for Beaumont, Banning, Palm Springs, Coachella, and Indio:

	Wholesale prices	Store selling prices	Home delivered prices
Grade A pasteurized and raw milk:			
10-gallon cans	\$3. 50		
3-gallon cans	1. 05		
2-gallon cans	. 70		
1-gallon cans	. 40		
Quarts	. 12	\$0. 15	\$0. 15
Pints	. 07	. 09	. 09
Third quarts	. 05		
Half pints	. 04		
Guaranteed milk:			
Quarts	. 15	. 18	. 18
Half pints	. 05	. 07	. 07
Certified milk:			
Quarts	. 20	. 25	. 25
Pints	. 12	. 15	. 15
Half pints	. 06	. 07	. 07
Chocolate milk: Quarts			
	. 10	. 13	. 13
Table cream, 25 percent:			
3-gallon cans	4. 50		
2-gallon cans	3. 00		
Quarts	. 50	. 60	. 60
Pints	. 30	. 40	. 40
Half pints	. 17	. 22	. 22
Whipping cream, 38 percent:			
3-gallon cans	5. 50		
2-gallon cans	4. 00		
Quarts	. 80	. 90	. 90
Pints	. 45	. 50	. 50
Half pints	. 25	. 30	. 30
Buttermilk, churned:			
10-gallon cans	3. 50		
Gallons	. 40		
Quarts	. 12	. 14	. 14
Skim milk:			
10-gallons	2. 00		
Gallons	. 25		
Quarts	. 10	. 10	. 10
Creamed cottage cheese:			
Pounds, bulk	. 14	. 18	
Cartons or jars 10 oz. or less	. 11	. 13	. 13

SCHEDULE VI

SAN BERNARDINO DISTRICT

The San Bernardino Sales District includes all portions of Riverside and San Bernardino counties which are within the Los Angeles Sales Area as described in Paragraph D of this License, together with such towns and rural districts in Los Angeles County as are wholly or in part within a seven-mile radius, measured from the city hall of Pomona, Calif.

The following minimum wholesale, resale, and retail prices shall be in effect when the Los Angeles Market quotation of 92 score butter is such that Section 3 of Exhibit A and revised base is in effect:

	Wholesale prices	Minimum store selling prices	Minimum home delivered prices
Grade A pasteurized and raw milk:			
10-gallon cans	\$3. 15	-----	-----
3-gallon cans	1. 00	-----	-----
2-gallon cans .....	. 72	-----	-----
1-gallon cans .....	. 38	-----	-----
Quarts .....	. 10	\$0. 12	\$0. 12
Pints .....	. 07	. 09	. 09
Third quarts .....	. 05	-----	-----
Half pints .....	. 04	-----	-----
Gallon, bulk ¹ .....	. 44	-----	-----
Guaranteed milk:			
Quarts .....	. 13	. 15	. 15
Pints .....	. 08	. 10	. 10
Raw milk, certified:			
Quarts .....	. 15	. 17	. 17
Pints .....	. 10	. 12	. 12
Third quarts .....	. 07	-----	-----
Half pints .....	. 06	-----	-----
Chocolate milk: Quarts .....	. 10	. 12	. 12
Table cream, 25 percent:			
3-gallon cans	4. 00	-----	-----
2-gallon cans	2. 70	-----	-----
Quarts .....	. 40	. 50	. 50
Pints .....	. 21	. 29	. 29
Half pints .....	. 13	. 16	. 16
Whipping cream, 38 percent:			
3-gallon cans	6. 20	-----	-----
2-gallon cans	4. 10	-----	-----
Quarts .....	. 53	. 73	. 73
Pints .....	. 36	. 46	. 46
Half pints .....	. 19	. 24	. 24
Sour cream:			
Gallons	1. 25	-----	-----
Half pints .....	. 10	. 13	. 13
Churned buttermilk:			
10-gallon cans	2. 70	-----	-----
3-gallon cans .....	. 95	-----	-----
2-gallon cans .....	. 70	-----	-----
1-gallon cans .....	. 38	-----	-----
Quarts .....	. 10	. 12	. 12
Third quarts .....	. 05	-----	-----
Half pints .....	. 04	-----	-----
Skim milk:			
10-gallon cans	1. 80	-----	-----
3-gallon cans .....	. 65	-----	-----
2-gallon cans .....	. 48	-----	-----
1-gallon cans .....	. 25	-----	-----
Quarts .....	. 08	. 10	. 10
Creamed cottage cheese:			
Pounds, bulk .....	. 13	. 17	-----
Cartons or jars, 10 ounces or less .....	. 09	. 11	. 11

¹ This price applies only to bulk milk sold on cash and carry basis at creamery or dairy.

Inter-price licensed dairies, a 10% reduction will be made from all listed wholesale prices; mountain resorts and desert areas add to all milk, Motor Transit Freight.

The prices listed below will apply for Beaumont, Banning, Palm Springs, Coachella, and Indio.

	Wholesale prices	Minimum store selling prices	Minimum home delivered prices
Grade A pasteurized and raw milk:			
10-gallon cans.....	\$3. 85	-----	-----
3-gallon cans.....	1. 35	-----	-----
2-gallon cans.....	. 77	-----	-----
1-gallon cans.....	. 44	-----	-----
Quarts.....	. 13	\$0. 16	\$0. 16
Pints.....	. 07	. 09	. 09
Third quarts.....	. 05	-----	-----
Half pints.....	. 04	-----	-----
Guaranteed milk:			
Quarts.....	. 15	. 18	. 18
Pints.....	. 08	. 10	. 10
Half pints.....	. 05	. 07	. 07
Certified milk:			
Quarts.....	. 20	. 25	. 25
Pints.....	. 12	. 15	. 15
Half pints.....	. 06	. 07	. 07
Chocolate drink: Quarts.....	. 10	. 13	. 13
Table cream, 25 percent:			
3-gallon cans.....	4. 50	-----	-----
2-gallon cans.....	3. 00	-----	-----
Quarts.....	. 50	. 60	. 60
Pints.....	. 30	. 40	. 40
Half pints.....	. 17	. 22	. 22
Whipping cream, 38 percent:			
3-gallon cans.....	5. 50	-----	-----
2-gallon cans.....	4. 00	-----	-----
Quarts.....	. 80	. 90	. 90
Pints.....	. 45	. 50	. 50
Half pints.....	. 25	. 30	. 30
Buttermilk, churned:			
10-gallon cans.....	3. 50	-----	-----
Gallons.....	. 40	-----	-----
Quarts.....	. 12	. 14	. 14
Skim milk:			
10 gallons or more.....	2. 00	-----	-----
Gallons.....	. 25	-----	-----
Quarts.....	. 08	. 10	. 10
Creamed cottage cheese:			
Pounds, bulk.....	. 14	. 18	-----
Cartons or jars, 10 ounces or less.....	. 11	. 13	. 13

SCHEDULE VII

ORANGE COUNTY DISTRICT, 10 CENTS PER QUART, RETAIL

The Orange County Sales District includes all communities in Orange County.

The following minimum wholesale, resale, and retail prices shall be in effect when the Los Angeles Market quotation of 92 score butter is such that Section 1 of Exhibit A and revised base is in effect.

Milk, gr
10-g
3-g
2-g
Qua
Pin
Thir
Hal
Raw mil
Qua
Pin
Thir
Hal
Guarant
Qua
Pin
Raw mil
Qua
Pin
Thir
Hal
Chocolat
Table cre
3-ga
2-ga
Qua
Hal
Whipping
3-ga
2-ga
Qua
Hal
Sour crea
Gallic
Half
Churned
10-ga
3-ga
2-ga
1-ga
Qua
Thir
Half
Skim milk
10-ga
3-ga
2-ga
1-ga
Qua
Thir
Half
Creamed c
Poun
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Orange

	Wholesale prices	Store selling prices	Home delivered prices
Milk, grade A, pasteurized:			
10-gallon cans	\$2. 50		
3-gallon cans	. 85		
2-gallon cans	. 60		
1-gallon cans	. 32		
Quarts	. 08	\$0. 10	\$0. 10
Pints	. 06	. 07	. 07
Third quarts	. 04		
Half pints	. 03		
Raw milk, grade A:			
Quarts	. 08	. 10	. 10
Pints	. 06	. 07	. 07
Third quarts	. 04		
Half pints	. 03		
Guaranteed milk:			
Quarts	. 11	. 13	. 13
Pints	. 08	. 09	. 09
Raw milk, certified:			
Quarts	. 18	. 20	. 20
Pints	. 11	. 12	. 12
Third quarts	. 05		
Half pints	. 04		
Chocolate drink: Quarts	. 08	. 10	. 10
Table cream, 27 percent:			
3-gallon cans	3. 15		
2-gallon cans	2. 10		
Quarts	. 28	. 40	. 40
Half pints	. 11	. 14	. 14
Whipping cream, 38 percent:			
3-gallon cans	4. 65		
2-gallon cans	3. 10		
Quarts	. 40	. 60	. 60
Half pints	. 17	. 20	. 20
Sour cream:			
Gallon cans	1. 00		
Half pints	. 09	. 11	. 11
Churned buttermilk:			
10-gallon cans	2. 00		
3-gallon cans	. 85		
2-gallon cans	. 60		
1-gallon cans	. 32		
Quarts	. 08	. 10	. 10
Third quarts	. 04		
Half pints	. 03		
Skim milk:			
10-gallon cans	1. 30		
3-gallon cans	. 45		
2-gallon cans	. 30		
1-gallon cans	. 15		
Quarts	. 06	. 07	. 07
Creamed cottage cheese:			
Pounds, bulk	. 11	. 15	
Cartons or jars, 10 ounces or less	. 08	. 10	. 10
16-ounce returnable glass	. 13	. 15	. 15

SCHEDULE VIII

ORANGE COUNTY SALES DISTRICT

The Orange County Sales District includes all communities in Orange County.

The following minimum wholesale, resale, and retail prices shall be in effect when the Los Angeles Market quotation of 92 score butter is such that Section 2 of Exhibit A and revised base is in effect.

	Wholesale prices	Store selling prices	Home delivered prices
Milk, grade A, pasteurized:			
10-gallon cans.....	\$2. 85		
3-gallon cans.....	. 95		
2-gallon cans.....	. 70		
1-gallon cans.....	. 36		
Quarts.....	. 09	\$0. 11	\$0. 11
Pints.....	. 07	. 08	. 08
Third quarts.....	. 04½		
Half pints.....	. 03½		
Raw milk, grade A:			
Quarts.....	. 09	. 11	. 11
Pints.....	. 07	. 08	. 08
Third quarts.....	. 04½		
Half pints.....	. 03½		
Guaranteed milk:			
Quarts.....	. 12	. 14	. 14
Pints.....	. 09	. 10	. 10
Raw milk, certified:			
Quarts.....	. 18	. 20	. 20
Pints.....	. 11	. 12	. 12
Third quarts.....	. 05½		
Half pints.....	. 04½		
Chocolate drink: Quarts.....	. 09	. 11	. 11
Table cream, 27 percent:			
3-gallon cans.....	3. 65		
2-gallon cans.....	2. 50		
Quarts.....	. 45	. 50	. 50
Half pints.....	. 13	. 15	. 15
Whipping cream, 38 percent:			
3-gallon cans.....	5. 50		
2-gallon cans.....	3. 65		
Quarts.....	. 58	. 68	. 68
Half pints.....	. 19	. 22	. 22
Sour cream:			
Gallon.....	1. 10		
Half pints.....	. 10	. 12	. 12
Churned buttermilk:			
10-gallon cans.....	2. 40		
3-gallon cans.....	. 95		
2-gallon cans.....	. 70		
1-gallon can.....	. 36		
Quarts.....	. 09	. 11	. 11
Third quarts.....	. 04½		
Half pints.....	. 03½		
Skim milk:			
10-gallon cans.....	1. 50		
3-gallon cans.....	. 55		
2-gallon cans.....	. 38		
1-gallon can.....	. 20		
Quarts.....	. 07	. 08	. 08
Creamed cottage cheese:			
Pounds, bulk.....	. 12	. 16	
Cartons or jars, 10 ounces or less.....	. 09	. 11	. 11
16-ounce, returnable.....	. 14	. 16	. 16

SCHEDULE IX
ORANGE COUNTY SALES DISTRICT

The Orange County Sales District includes all communities in Orange County.

The following minimum wholesale, resale, and retail prices shall be in effect when the Los Angeles Market quotation of 92 score butter is such that Section 3 of Exhibit A and revised base is in effect.

	Wholesale prices	Store selling prices	Home delivered prices
Milk, Grade A, pasteurized:			
10-gallon cans	\$3. 20		
3-gallon cans	1. 05		
2-gallon cans	. 80		
1-gallon cans	. 40		
Quarts	. 10	\$0. 12	\$0. 12
Pints	. 08	. 09	. 09
Third quarts	. 06		
Half pints	. 04		
Raw milk, Grade A:			
Quarts	. 10	. 12	. 12
Pints	. 08	. 09	. 09
Third quarts	. 05		
Half pints	. 04		
Guaranteed milk:			
Quarts	. 13	. 15	. 15
Pints	. 10	. 11	. 11
Raw milk, certified:			
Quarts	. 19	. 21	. 21
Pints	. 12	. 13	. 13
Third quarts	. 06		
Half pints	. 05		
Chocolate drink, quarts	. 10	. 12	. 12
Table cream, 27 percent:			
3-gallon cans	4. 10		
2-gallon cans	2. 80		
Quarts	. 50	. 55	. 55
Half pints	. 14	. 16	. 16
Whipping cream, 38 percent:			
3-gallon cans	6. 20		
2-gallon cans	4. 50		
Quarts	. 66	. 76	. 76
Half pints	. 21	. 24	. 24
Sour cream:			
Gallon	1. 20		
Half pints	. 11	. 13	. 13
Churned buttermilk:			
10-gallon cans	2. 80		
3-gallon cans	1. 05		
2-gallon cans	. 80		
1-gallon cans	. 40		
Quarts	. 10	. 12	. 12
Third quarts	. 05		
Half pints	. 04		
Skim milk:			
10-gallon cans	1. 70		
3-gallon cans	. 65		
2-gallon cans	. 46		
1-gallon cans	. 25		
Quarts	. 08	. 09	. 09
Creamed cottage cheese:			
Pounds, bulk	. 13	. 17	
Cartons or jars, 10 ounces or less	. 09	. 11	. 11
16-ounce returnable jars	. 15	. 17	. 17

SCHEDULE X

COTTAGE CHEESE AND CHURNED BUTTERMILK RULES, REGULATIONS,
AND PRICES

1. The following rules, regulations, and price schedules apply to the Los Angeles, San Bernardino, and Orange Districts, except Beaumont, Banning, Palm Springs, Coachella, and Indio in the San Bernardino Sales Districts. There shall be added to the prices in this schedule in the case of mountain resorts and desert areas in the San Bernardino District the motor transit freight rate as established by the California Railroad Commission, irrespective of the actual mode of delivery.

QUANTITY DISCOUNTS

2. (a) The wholesale prices of churned buttermilk in 10-gallon cans set forth in Schedules B (1) to B (9), inclusive, of this exhibit shall be subject to the following quantity discount: When a customer buys more than twelve 10-gallon cans per week, there shall be a discount of ten percent on the wholesale price of 10-gallon cans set forth in said schedules. All sales to customers shall be invoiced at the full wholesale price. At the end of each month credit shall be granted to those customers whose purchases are such as entitle them to the foregoing discount for discount so earned.

(b) The wholesale prices of bulk creamed cottage cheese set forth in Schedules B (1) to B (9), inclusive, of this Exhibit shall be subject to the following quantity discounts: When a customer buys more than 250 pounds and not in excess of 1,250 pounds per month, there shall be a discount of one cent per pound. When a customer buys in excess of 1,250 pounds per month, there shall be a discount of two cents per pound. All sales to customers shall be invoiced net without discount. At the end of each month, credit shall be granted to those customers whose purchases are such as entitle them to the foregoing discounts for discounts so earned.

(c) When a customer is purchasing a quantity of bulk creamed cottage cheese and/or churned buttermilk from two or more distributors which if purchased from a single distributor would entitle him to either or both of the foregoing quantity discounts, he shall be entitled to such discounts from each of such distributors pro rata to the quantities received from each such distributor.

DRY COTTAGE CHEESE

3. The minimum prices for dry cottage cheese, including therein dry curd, special mix and hoop cheese shall be as follows:

	Wholesale	Resale
When Section 1 and revised base prevail.....	\$0. 08	\$0. 10
When Section 2 and revised base prevail.....	. 09	1. 11
When Section 3 and revised base prevail.....	. 10	1. 12

¹ Resale prices for hoop cheese shall be two cents more than the corresponding resale prices applicable to dry curd and special mix.

SCHEDULE XI

CREAM JOBBING PRICE SCHEDULE

The following schedule of minimum prices apply to sales by cream jobbers to persons (1) who are engaged principally in the distribution of milk and its products and (2) who have a "creamery operator's" factory license issued by the Department of Agriculture of the State of California. Such schedule shall be in effect when the Los Angeles Market quotation of 92 score butter is such that Section 1 of Exhibit A and revised base is in effect:

CHURNING CREAM

For each pound of butterfat contained therein add .08¢ to the Los Angeles Market quotation of 92 score butter effective for the day of delivery.

GRADE A CREAM IN TEN-GALLON CANS

For each pound of butterfat contained therein, add to the Los Angeles Market quotation for 92 score butter effective for the date of delivery:

	In weekly quantities of—		
	1-14 cans	15-34 cans	35 cans or over
Raw cream, 38-40 percent.....	\$0. 17	\$0. 16	\$0. 15
Pasteurized cream, 38-40 percent.....	. 19	. 18	. 17
Raw cream standardized to other butterfat percentages.....	. 19	. 18	. 17
Pasteurized cream standardized to other butterfat percentages.....	. 20	. 19	. 18

SKIM MILK (IN BULK, PER GALLON)

Condensed:	
10 gallons or more in a single delivery.....	\$0. 25
Deliveries of less than 10 gallons.....	. 30
Not condensed:	
10 gallons or more in a single delivery.....	. 07
Deliveries of less than 10 gallons.....	Wholesale prices apply

SCHEDULE XII

CREAM JOBBING PRICE SCHEDULE

The following schedule of minimum prices apply to sales by cream jobbers to persons (1) who are engaged principally in the distribution of milk and its products and (2) who have a "creamery operator's" factory license issued by the Department of Agriculture of the State of California. Such schedule shall be in effect when the Los Angeles Market quotation of 92 score butter is such that Section 2 of Exhibit A and revised base is in effect:

CHURNING CREAM

For each pound of butterfat contained therein add 10¢ to the Los Angeles quotation for 92 score butter effective for the day of delivery.

GRADE A CREAM IN TEN-GALLON CANS

For each pound of butterfat contained therein add to the Los Angeles Market quotation for 92 score butter effective for the date of delivery.

	In weekly quantities of—		
	1-14 cans	15-34 cans	35 cans or over
Raw cream, 38-40 percent.....	\$0. 20	\$0. 19	\$0. 18
Pasteurized cream, 38-40 percent.....	. 22	. 21	. 20
Raw cream standardized to other butterfat percentages.....	. 22	. 21	. 20
Pasteurized cream standardized to other butterfat percentages.....	. 23	. 22	. 21

SKIM MILK (IN BULK, PER GALLON)

Condensed:		
10 gallons or more in a single delivery.....		\$0. 30
Deliveries of less than 10 gallons.....		. 35
Not condensed:		
10 gallons or more in a single delivery.....		. 08
Deliveries of less than 10 gallons.....		Wholesale prices apply

SCHEDULE XIII

CREAM JOBBING PRICE SCHEDULE

The following schedules of minimum prices apply to sales by cream jobbers to persons (1) who are engaged principally in the distribution of milk and its products and (2) who have a "creamery operator's" factory license issued by the Department of Agriculture of the State of California. Such schedules shall be in effect when the Los Angeles Market quotation of 92 score butter is such that Section 3 of Exhibit A and revised base is in effect:

CHURNING CREAM

For each pound of butterfat contained therein add 10¢ to the Los Angeles Market quotation for 92 score butter effective for the day of delivery.

GRADE A CREAM IN TEN-GALLON CANS

For each pound of butterfat contained therein add to the Los Angeles Market quotation for 92 score butter effective for the date of delivery.

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	In weekly quantities of—		
	1-14 cans	15-34 cans	35 cans or over
Raw cream, 38-40 percent.....	\$0. 24	\$0. 23	\$0. 22
Pasteurized cream, 38-40 percent.....	. 26	. 25	. 24
Raw cream standardized to other butterfat percentages.....	. 26	. 25	. 24
Pasteurized cream standardized to other butterfat percentages.....	. 27	. 26	. 25

SKIM MILK (IN BULK, PER GALLON)

Condensed:		
10 gallons or more in a single delivery.....		\$0. 32
Deliveries of less than 10 gallons.....		. 37
Not condensed:		
10 gallons or more in a single delivery.....		. 09
Deliveries of less than 10 gallons.....		Wholesale prices apply

SCHEDULE XIV

PRICES TO PEDDLERS FOR RESALE

The following minimum prices f. o. b. place of bottling or other packaging shall be charged to peddlers who buy for resale:

	When Sec. 1 of Ex. A and Revised Base is in effect	When Sec. 2 of Ex. A and Revised Base is in effect	When Sec. 3 of Ex. A and Revised Base is in effect
Pasteurized grade A milk:			
3-gallons.....	\$0. 70	\$0. 80	\$0. 90
2-gallons.....	. 45	. 55	. 62
1-gallons.....	. 24	. 28	. 32
Quarts.....	. 06	. 07	. 08
Pints.....	. 03	. 04	. 05
Third quarts.....	. 02½	. 03½	. 04
Half pints.....	. 02	. 02½	. 03
Grade A raw:			
Quarts.....	. 06	. 07	. 08
Pints.....	. 03	. 04	. 05
Third quarts.....	. 02½	. 03½	. 04
Half pints.....	. 02	. 02½	. 03
Chocolate drink:			
Quarts.....	. 06	. 07	. 08
Pints.....	. 03	. 04	. 05
Third quarts.....	. 02½	. 03½	. 04
Half pints.....	. 02	. 02½	. 03
Churned butter milk:			
3-gallons.....	. 70	. 80	. 90
2-gallons.....	. 45	. 55	. 65
1-gallons.....	. 24	. 28	. 32
Quarts.....	. 06	. 07	. 08
Pints.....	. 03½	. 04	. 04½
Third quarts.....	. 03	. 03½	. 04
Half pints.....	. 02	. 02½	. 03
Guaranteed milk:			
Quarts.....	. 09	. 10	. 11
Pints.....	. 05	. 06	. 07
Certified milk, raw:			
Quarts.....	. 11	. 12	. 13
Pints.....	. 07	. 08	. 09

	When Sec. 1 of Ex. A and Revised Base is in effect	When Sec. 2 of Ex. A and Revised Base is in effect	When Sec. 3 of Ex. A and Revised Base is in effect
Coffee cream, 22 percent:			
Quarts.....	\$0. 23	\$0. 28	\$0. 32
Pints.....	. 14	. 16	. 18
Half pints.....	. 07	. 08	. 09
Table cream, 27 percent:			
Quarts.....	. 27	. 32	. 39
Pints.....	. 16	. 18	. 20
Half pints.....	. 09	. 10	. 11
Whipping cream, 38 percent:			
Quarts.....	. 37	. 45	. 50
Pints.....	. 22	. 25	. 31
Half pints.....	. 13	. 16	. 17
Sour cream: Half pints.....	. 07	. 08	. 09
Creamed cottage cheese: Glass, 10 ounces or less.....	. 09	. 10	. 10
Skim milk: 1 gallon.....	. 11	. 15	. 20

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EXHIBIT C

RULES FOR CONTROL OF PRODUCTION AND ESTABLISHMENT OF SURPLUS PRICE TO PRODUCERS OF GRADE A MARKET MILK

Rules for control of production.—The following rules shall be applicable to all producers of Grade A Market Milk.

1. The term "production base period" as used herein means the period March 16, 1933, to June 15, 1933, both dates inclusive.

2. The term "deliveries" as used herein means any or all of the following:

(a) Milk shipped by any producer to any distributor of Grade A Market Milk.

(b) Milk shipped by a producer to the surplus plant of Producers Arbitration Committee, Inc.

(c) Milk sold by a producer as a distributor either as Grade A Market Milk, or as fluid cream or both.

3. The term "market percentage" means the percentage arrived at by dividing the daily average of the total deliveries of all producers who shipped milk during the production base period *into* the daily average quantity of milk sold for consumption as whole milk in the Los Angeles Sales Area during the month of June 1933 as determined by Los Angeles Milk Industry Board.

4. *General bases.*—The established base of each such producer marketing milk in the Los Angeles Sales Area on the effective date of this Agreement who was marketing milk during the entire production base period shall be arrived at as follows: Determine the average daily deliveries of each such producer during the production base period and apply the market percentage thereto. The resulting figure will be the established base of each such producer.

5. *Bases for producers starting deliveries after March 16 but on or before June 15, 1933.*—The established base of each such producer now marketing milk in the Los Angeles Sales Area who commenced to market milk after March 16, 1933, but on or prior to June 15, 1933, shall be arrived at as follows:

A. If any such producer so elects, his deliveries during the portion of the production base period in which he was marketing milk in the Los Angeles Sales Area may be treated as if such deliveries were his total deliveries during the full production base period. Determine the total deliveries of such producer and divide the same by 92, and apply the market percentage against the daily average quantity thus arrived at. The resulting quantity shall be the established base of each such producer.

B. If such producer does not elect to have his base established as provided in paragraph A above, then determine the total deliveries of such producer during a period of 92 days beginning with the date on which he commenced to market milk in the Los Angeles Sales Area and divide such total by 184. The resulting figure will be the established base of such producer.

6. *Bases of producers starting on and after June 16, 1933.*—The established base of each producer now marketing milk in the Los Angeles Sales Area who did not commence to market milk in the Los Angeles Sales Area on or prior to June 15, 1933, or who commences to market milk after the effective date of this Agreement shall be arrived at as follows: Determine the deliveries of such producer during a period of 92 days beginning with the date on which he begins to market milk in the Los Angeles Sales Area and divide the total of such deliveries by 368. The resulting figure will be the established base of such producer. In the case of any such producer whose established base cannot be determined fully as of the last day of any month beginning with the month of October 1933, a temporary established base pending the completion of 92 days of deliveries shall be determined in respect of each calendar month by determining the total deliveries of each producer for the period beginning with the date on which he commenced to market milk in the Los Angeles Sales Area and ending with the last day of such calendar month and dividing such total by four times the number of days included in such period. Such temporary base shall, for all purposes of this agreement, be considered the established base of such producers in respect of any such monthly accounting period.

7. *Adjustments of bases to deliveries.*—Any producer whose daily deliveries for any three consecutive months, excluding months prior to the month of November 1933, is less than 90% of his established base will thereby establish a new base according to his average daily deliveries during such three-month period. The application of this paragraph shall be subject to the provisions of paragraph 9.

8. *"Sales of bases."*—Sales of bases are allowed only in conjunction with the sale of cows and may be apportioned between the buyer and seller in accordance with the number of cows which the buyer has purchased and the number of cows which the seller has retained unsold. The buyer and the seller shall, in case of voluntary sale, jointly sign a statement in writing showing the amount of bases transferred to the buyer and retained by the seller, respectively, which writing shall be filed with the Producers' Arbitration Committee, Inc., within five days from the date of sale. Bases acquired by purchase of cows may be added to existing bases if any exist.

9. *Effect of fire, etc.*—The established base shall remain in effect for a period of three months following the initial test for tuberculosis or for contagious abortion by County, State, or Federal authorities, the loss of barn or herd, or both, by fire or Act of God. The established base shall be retained for a period of 45 days in case deliveries of Grade A Market Milk are shut off or excluded by order of any Board of Health having jurisdiction in the premises and in case of quarantine.

ESTABLISHMENT OF ADJUSTED BASE PRICE

1. Producers' Arbitration Committee, Inc., is operating and will continue to operate a surplus plant to which is delivered all milk from producers in the Los Angeles Milk Shed having established bases in excess of the requirements of distributors in the Los Angeles Sales Area for distribution as fluid milk in said area. Such surplus plant will have the following sources of receipts:

(a) The net proceeds arising from the sale of butter and powdered skimmed milk which has been manufactured by it from the butterfat and skimmed milk derived from milk delivered to the surplus plant. (Such net proceeds shall be the gross proceeds less the reasonable cost of operation of the surplus plant and less such amount as the Producers' Arbitration Committee, Inc., shall retain as working capital for the operation of the plant.)

(b) The proceeds of such milk delivered to it which it may have, under authority of Producers' Arbitration Committee, Inc., sold in time of shortage to contracting distributors in the Los Angeles Sales Area.

(c) The difference between the full base price and the surplus price as determined in accordance with the provisions of Exhibit A, Schedule I, and Exhibit A, Schedule III, which is payable under the provisions of Paragraphs 5 (a), 5 (b), and 5 (c) of this agreement.

2. The surplus plant will be accountable to producers delivering milk to it for the full base price in respect of deliveries not in excess of the individual producer's base, and the surplus price in respect of deliveries in excess of each producer's base. The total of the amounts so to be accounted for shall be computed and from the result of such computation shall be deducted the receipts from the operation of the surplus plant determined in the manner provided in the preceding paragraph. The difference will be the loss to the surplus plant resulting from its operations, to be charged against all deliveries of base milk whether to the surplus plant or to the contracting distributors.

3. The amount of the loss, determined as aforesaid, shall be divided by the total of all delivered base, expressed in terms of pounds of butterfat, whether to contracting distributors or to the surplus plant, the resulting figures being the amount per pound of butterfat which it is necessary to charge back against delivered bases of all producers in order to obtain the adjusted base price.

4. The difference between the full base price determined according to the provisions of Exhibit A, Schedule I, and Exhibit A, Schedule III, and the aforesaid loss per pound of butterfat determined as in the preceding paragraph, shall be the adjusted base price to be paid to all producers, whether delivering to contracting distributors or to the surplus plant, for deliveries not in excess of their respective bases.

5. The difference between the base price and the adjusted base price in respect of the base milk of all producers delivering to contracting distributors which difference is payable to Producers' Arbitration Committee, Inc., in accordance with the provisions of paragraph 5 of this Agreement when added to the similar deduction made directly by the surplus plant in respect of the base milk of all producers delivering to the surplus plant, results in a uniform adjusted base price for deliveries not in excess of base quantities of all producers.

6. Producers' Arbitration Committee, Inc., shall secure the necessary data from the contracting distributors and from the surplus plant, shall compute the foregoing adjustments each month, shall submit a statement containing such adjustments to the Los Angeles Milk Industry Board for its approval, and upon its approval shall notify distributors and producers as to the payments to be made by them respectively in accordance with the foregoing principles. It shall also cause to be paid the adjusted base price and/or surplus price to producers delivering base milk and/or surplus milk to the surplus plant.

7. Any sums deducted by the Producers' Arbitration Committee, Inc., and retained as working capital for the operation of the plant as provided in paragraph 1 of this Exhibit C shall be set up on the books of the Producers' Arbitration Committee, Inc., as a separate fund to the credit of each producer from whom such funds were deducted; and in case of liquidation of Producers' Arbitration Committee, Inc., or discontinuance of business by contributing producers there shall be paid back to each producer the proportion of the total net worth of the Association which his contribution is to the total of all sums so contributed. Producers' Arbitration Committee, Inc., shall develop and make effective a financing plan, with approval of the Los Angeles Milk Industry Board, to cover such deductions for working capital under which monthly deductions and total accumulations will meet the capital needs of the Producers' Arbitration Committee, Inc., without accumulation of unnecessary sums.

8. Producers' Arbitration Committee, Inc., may make such regulations as may be necessary to carry out the operations of the surplus plant and adjustment of prices to producers in accordance with the foregoing principles, such regulations to be subject to the approval of the Los Angeles Milk Industry Board and the Secretary.

9. In the event the daily average quantity of milk sold for consumption as whole milk in the Los Angeles Sales Area becomes so decreased or increased as to render impractical, in the opinion of the Los Angeles Milk Industry Board, the accounting for such variations through adjustments in the base price paid producers as provided in paragraph 4, Schedule "C", the Producers' Arbitration Committee, Inc., shall with the approval of the Los Angeles Milk Industry Board and the Secretary, make such uniform increases or decreases, as the case may be, in all existing established bases of producers, as will cause the sum total of all bases adjusted as aforesaid, to again approximate in amount the daily average quantity of milk sold for consumption as whole milk in the Los Angeles Sales Area.

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EXHIBIT D

LOS ANGELES MILK INDUSTRY BOARD

1. The Los Angeles Milk Industry Board shall be composed of thirteen members all of whose appointments shall be subject to the approval of the Secretary, to wit:

(a) Six producers. Five of these shall be selected by the Producers' Arbitration Committee, Inc. (One from each of the following five member associations: California Milk Producers' Association, Independent Milk Producers' Association, Los Angeles County Natural Milk Producers' Association, Los Angeles Mutual Dairymen's Association, Southern California Bottled Raw Milk Association.) The sixth producer shall be selected by producers not members of the five associations of producers mentioned above, provided, however, that if such producers have not selected a member within five days after the effective date of this License, Producers' Arbitration Committee, Inc., shall select such sixth member from among producers not members of any of the aforementioned five associations.

(b) Six distributors. Four of them shall be selected by the Southern California Milk Dealers' Association. One of these shall be selected by the Independent Milk Distributors' Association, Inc. The sixth distributor shall be selected by distributors not members of either of said associations, provided however, that if such distributors shall not have selected a member within five days after the effective date of this License, the five distributor members selected as above provided shall select such sixth member.

(c) The thirteenth member shall be selected by two-thirds vote of the twelve selected as specified in (a) and (b) above and such thirteenth member shall be the Chairman of the Board.

2. The duties of the Los Angeles Milk Industry Board in addition to those specifically set forth elsewhere in this License shall be to compile statistics and make surveys of costs and methods of production and distribution in the Los Angeles market, either alone or in collaboration with other agencies engaged in similar projects; to formulate a program for improving the quality of milk and the standards of the Industry generally in the Los Angeles market; to arbitrate disputes and to engage in advertising and sales promotion work which will further the interests of the industry.

(a) Subject to the approval of the Secretary, the Los Angeles Milk Industry Board may make such further rules, regulations and/or arrangements, not inconsistent with this License or with those which have been established by the Secretary, as may be necessary to carry out the plans and principles set forth in this License.

3. In the exercise of any powers or duties under this License—

(a) The Los Angeles Milk Industry Board shall not be liable for any damages caused by any acts or omissions of its members, whether acting individually or collectively as a Board.

(b) No member of Los Angeles Milk Industry Board shall be liable for any damages caused by the acts or omissions of any other member.

(c) No member shall be liable for any damages caused by his own acts or omissions, unless such acts or omissions involve fraud or willful misconduct on the part of such member.

EXHIBIT E

RULES OF FAIR PRACTICE

The following practices are considered unfair and shall not be engaged in by distributors or by their officers, employees, or agents:

(1) Any method or device whereby fluid milk is sold or offered for sale at a price less than stated in this License, whether by any discount, rebate, free service, merchandise, advertising, allowance, credit for bulk fluid milk returned, loans or credits outside of the usual course of business or other valuable consideration or combined price for such milk together with another commodity sold or offered for sale, whether separately or otherwise, or whereby a subsidy is given for either business or information or assistance in procuring business; or whereby business is obtained, or sought to be obtained, by misrepresentation as to any article listed in Exhibit B.

(2) For any distributor (a) to sell any fluid milk in a territory which within one year last past has been covered by him in any capacity for another distributor or (b) to cause to be sold through an agent or employee fluid milk in any territory which such agent or employee has within one year last past covered in any capacity for another distributor.

(3) The failure of any distributor to invoice daily 3¢ per bottle for any bottle difference, over or under, for any milk delivery at any wholesale stop, or to settle for the same when the milk is paid for.

EXHIBIT F

CREAM-BUYING PLAN

1. The plants of the distributors located in the counties listed in Exhibit A, Schedule II, shall take delivery for distribution as Grade A Market Cream only of Grade A milk which is delivered from producers in the Los Angeles Cream shed. Such producers for the present are not to receive bases but shall be subject to the provisions of this cream-buying plan.

2. There shall be an adjustment in each month for deliveries of milk for Grade A Market Cream by each producer, according to the quality thereof, the deductions to be made from each producer not delivering milk of the highest quality as set forth in Schedule I of this exhibit. The total deductions thus made shall be charged against each producer incurring said penalty and the total of all such deductions shall be handled in the following manner:

(a) If there be no surplus of deliveries of Grade A Milk for Grade A Market Cream above the purchases of Grade A Market Cream by distributors, in the Los Angeles Sales Area, then the total penalties shall be prorated back to the producers, including those who incurred the penalties, in proportion to the number of pounds of butterfat delivered by them to said plants, respectively.

The foregoing adjustment shall be computed for each month by the accountants of the Los Angeles Cream Clearing Association, who shall secure the necessary data from the several plants and notify them, respectively, of the resulting price adjustments to be made in the case of each producer delivering milk to each such plant for Grade A Market Cream.

(b) If there be a surplus of such deliveries to the plants over the aforesaid requirements of distributors in the Los Angeles Sales Area, then the total amount of the penalties shall be added to the returns received from surplus products as provided in the next succeeding paragraph.

If at any time there be an excess of such deliveries of milk to the plants over the Grade A Market Cream requirements of the distributors in the Los Angeles Sales Area, the plant or plants having such excess, shall manufacture such excess over requirements into butter or other milk products. The plants disposing of deliveries of milk in the foregoing manner shall be entitled to be reimbursed for the loss sustained (that is to say, the difference between the minimum price which they are obligated to pay producers for said milk in accordance with the provisions of this cream-buying plan, exclusive of penalties, and the gross proceeds of manufacturing such milk into butter and powdered skim). Such plants shall report the results of such manufacturing operations to the accountants, who shall cause such plants to be reimbursed out of any penalties incurred by the producers

under the provisions of the foregoing paragraph. If such penalties are not sufficient to fully reimburse such plants, the difference shall be charged back against all producers delivering milk for Grade A Market Cream to all the plants, prorate, in accordance with their deliveries of such milk during such month. If there be any balance of penalties after reimbursing the plants disposing of milk in manufactured products as aforesaid, the remaining balance of such penalties shall be prorated back to the individual producers in a manner similar to that provided in the preceding paragraph. The foregoing adjustment shall be computed for each month by the accountants of the Los Angeles Cream Clearing Association who shall secure the necessary data from the several plants and shall notify them, respectively, of resulting price adjustments to be made in the case of each producer and of the amount to be paid to the plant or plants entitled to reimbursement.

3. The expenses of the said accountants including reasonable compensation for their services incurred in the operation of the Cream Buying Plan shall be prorated back to producers of milk for Grade A Market Cream delivering to the aforesaid plants, in proportion to the number of pounds of butterfat delivered by such producers. Such pro rata charges shall be collected by said plants from such producers supplying them and the moneys so collected paid to the accountants.

SCHEDULE I

The specifications for each class of milk for Grade A Market Cream and the deduction applicable to the several classes are as follows:

CLASS I MILK

Flavor and Odor—No. 1 or No. 2 rating.

Must be refrigerated except when delivered to plants in Santa Barbara County.

Bacterial count shall not exceed 25,000 per c.c.

If the milk has a flavor rating of No. 3, there shall be a deduction of 2 cents per pound of butterfat.

CLASS II MILK

Flavor and Odor—No. 1 or No. 2 rating.

Bacterial count shall not exceed 25,000 per c.c.

Class II milk shall be paid for at 1 cent less per pound of butterfat than Class I milk.

If the milk has a flavor rating of No. 3, there shall be a further deduction of 2 cents per pound of butterfat.

CLASS III MILK

Flavor and Odor—No. 1 or No. 2 rating.

Bacterial count shall not exceed 50,000 per c.c.

Class III milk shall be paid for at 2 cents less per pound of butterfat than Class I milk.

If the milk has a flavor rating of No. 3 there shall be a further deduction of 2 cents per pound of butterfat.

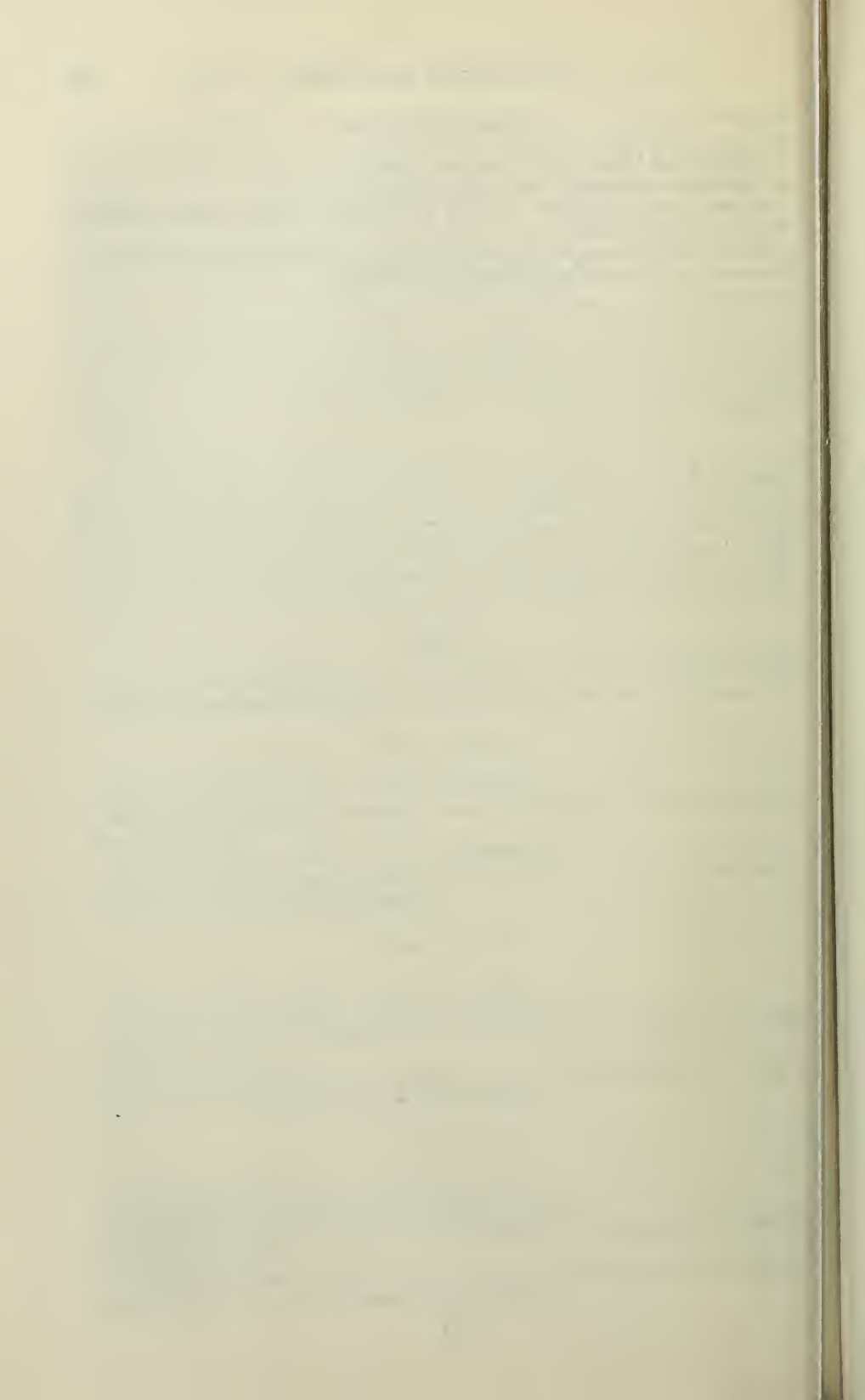
CLASS IV MILK

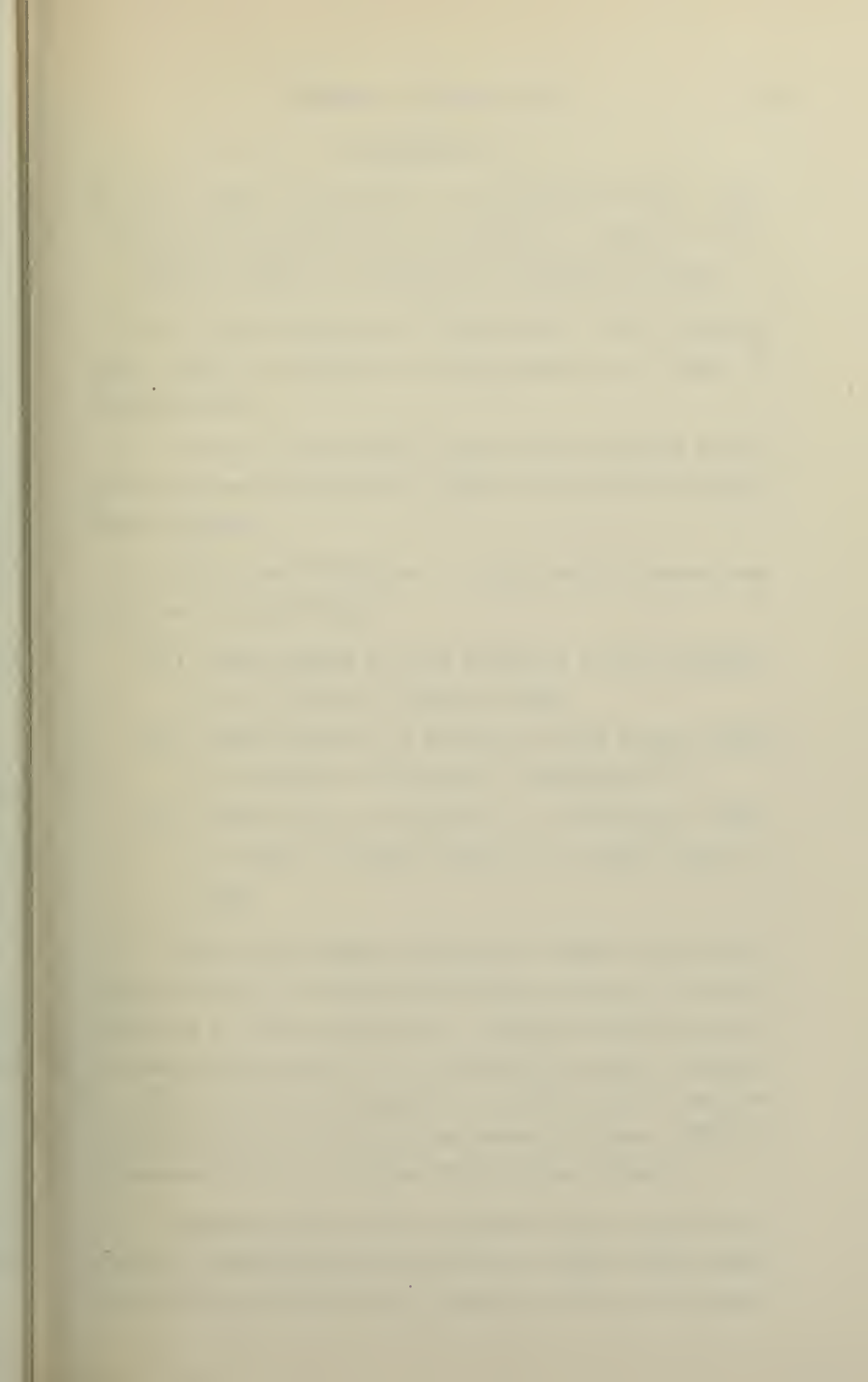
Flavor and Odor—No. 1 or No. 2 rating.

Bacterial count shall not exceed 150,000 per c.c.

Class IV milk shall be paid for at 4 cents less per pound of butterfat than Class I milk.

If the milk has a flavor rating of No. 3, there shall be a further deduction of 2 cents per pound of butterfat.





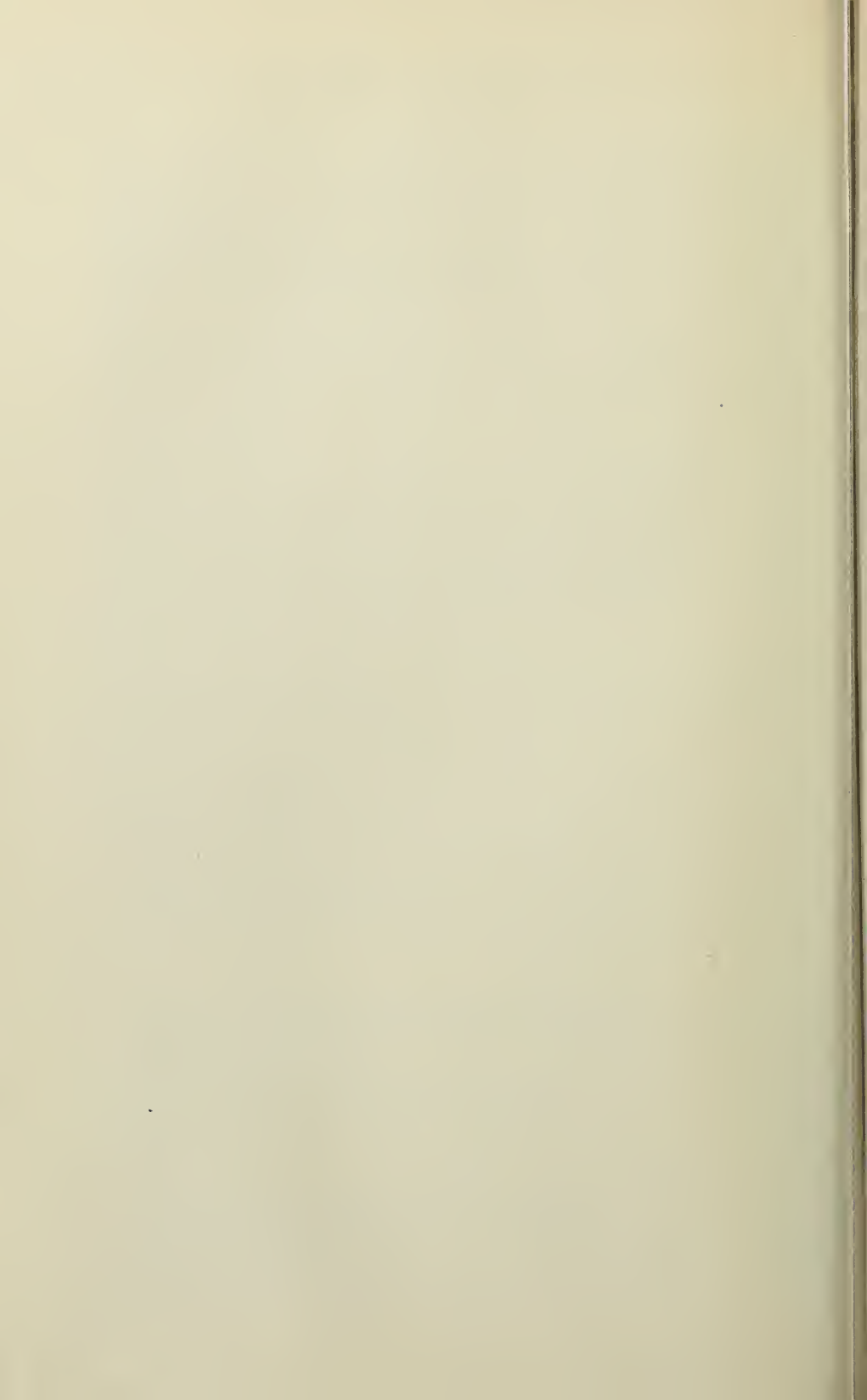


EXHIBIT C

RULES FOR CONTROL OF PRODUCTION AND
ESTABLISHMENT OF SURPLUS PRICE TO
PRODUCERS OF GRADE A MARKET MILK

RULES FOR CONTROL OF PRODUCTION. The following rules shall be applicable to all producers of Grade A Market Milk.

1. The term "production base period" as used herein means the period March 16, 1933 to June 15, 1933 both dates inclusive.

2. The term "deliveries" as used herein means any or all of the following:

- (a) Milk shipped by any producer to any distributor of Grade A Market Milk,
- (b) Milk shipped by a producer to the surplus plant of Producers Arbitration Committee, Inc.
- (c) Milk sold by a producer as a distributor either as Grade A Market Milk or as fluid cream or both.

3. The term "market percentage" means the percentage arrived at by dividing the daily average of the total deliveries of all producers who shipped milk during the production base period into the daily average quantity of milk sold for consumption as whole milk in the Los Angeles Sales Area during the month of June, 1933, as determined by Los Angeles Milk Industry Board.

4. GENERAL BASES. The established base of each such producer marketing milk in the Los Angeles Sales Area on the effective date of this Agreement who was market-

ing milk during the entire production base period shall be arrived at as follows: Determine the average daily deliveries of each such producer during the production base period and apply the market percentage thereto. The resulting figure will be the established base of each such producer.

5. BASES FOR PRODUCERS STARTING DELIVERIES AFTER MARCH 16 BUT ON OR BEFORE JUNE 15, 1933. The established base of each such producer now marketing milk in the Los Angeles Sales Area who commenced to market milk after March 16, 1933, but on or prior to June 15, 1933, shall be arrived at as follows:

A. If any such producer so elects, his deliveries during the portion of the production base period in which he was marketing milk in the Los Angeles Sales Area may be treated as if such deliveries were his total deliveries during the full production base period. Determine the total deliveries of such producer and divide the same by 92, and apply the market percentage against the daily average quantity thus arrived at. The resulting quantity shall be the established base of each such producer.

B. If such producer does not elect to have his base established as provided in paragraph A. above, then determine the total deliveries of such producer during a period of 92 days beginning with the date on which he commenced to market milk in the Los Angeles Sales Area and divide such total by 184. The resulting figure will be the established base of such producer.

6. BASES OF PRODUCERS STARTING ON AND AFTER JUNE 16, 1933. The established base of each producer now marketing milk in the Los Angeles Sales Area

who did not commence to market milk in the Los Angeles Sales Area on or prior to June 15, 1933, or who commences to market milk after the effective date of this Agreement shall be arrived at as follows: Determine the deliveries of such producer during a period of 92 days beginning with the date on which he begins to market milk in the Los Angeles Sales Area and divide the total of such deliveries by 368. The resulting figure will be the established base of such producer. In the case of any such producer whose established base cannot be determined fully as of the last day of any month beginning with the month of October, 1933, a temporary established base pending the completion of 92 days of deliveries shall be determined in respect of each calendar month by determining the total deliveries of each producer for the period beginning with the date on which he commenced to market milk in the Los Angeles Sales Area and ending with the last day of such calendar month and dividing such total by four times the number of days included in such period. Such temporary base shall, for all purposes of this agreement be considered the established base of such producers in respect of any such monthly accounting period.

7. ADJUSTMENTS OF BASES TO DELIVERIES. Any producer whose daily deliveries for any three consecutive months excluding months prior to the month of November, 1933, is less than 90% of his established base will thereby establish a new base according to his average daily deliveries during such three month period. The application of this paragraph shall be subject to the provisions of paragraph 9.

8. "SALES OF BASES." Sales of bases are allowed only in conjunction with the sale of cows and may be apportioned between the buyer and seller in accordance with the number of cows which the buyer has purchased and the number of cows which the seller has retained unsold. The buyer and the seller shall, in case of voluntary sale, jointly sign a statement in writing showing the amount of bases transferred to the buyer and retained by the seller, respectively, which writing shall be filed with the Producers' Arbitration Committee, Inc., within five days from the date of sale. Bases acquired by purchase of cows may be added to existing bases if any exist.

9. EFFECT OF FIRE, ETC. The established base shall remain in effect for a period of three months following the initial test for tuberculosis or for contagious abortion by County, State or Federal authorities, the loss of barn or herd, or both, by fire or Act of God. The established base shall be retained for a period of 45 days in case deliveries of Grade A Market Milk are shut off or excluded by order of any Board of Health having jurisdiction in the premises and in case of quarantine.

ESTABLISHMENT OF ADJUSTED BASE PRICE.

1. Producers' Arbitration Committee, Inc., is operating and will continue to operate a surplus plant to which is delivered all milk from producers in the Los Angeles Milk Shed having established bases in excess of the requirements of contracting distributors in the Los Angeles Sales Area for distribution as fluid milk in said area. Such surplus plant will have the following sources of receipts:

- (a) The net proceeds arising from the sale of butter and powdered skimmed milk which has been manufactured by it from the butter fat and skimmed milk derived from milk delivered to the surplus plant. (Such net proceeds shall be the gross proceeds less the reasonable cost of operation of the surplus plant and less such amount as the Producers' Arbitration Committee, Inc., shall retain as working capital for the operation of the plant.)
- (b) The proceeds of such milk delivered to it which it may have, under authority of Producers' Arbitration Committee, Inc., sold in time of shortage to contracting distributors in the Los Angeles Sales Area.
- (c) The difference between the full base price and the surplus price as determined in accordance with the provisions of Exhibit A, Schedule I, and Exhibit A, Schedule III, which is payable under the provisions of Paragraph 5 (a), 5 (b), and 5 (c) of this agreement.

2. The surplus plant will be accountable to producers delivering milk to it for the full base price in respect of deliveries not in excess of the individual producer's base, and the surplus price in respect of deliveries in excess of each producer's base. The total of the amounts so to be accounted for shall be computed and from the result of such computation shall be deducted the receipts from the operation of the surplus plant determined in the manner provided in the preceding paragraph. The difference will be the loss to the surplus plant resulting

from its operations, to be charged against all deliveries of base milk whether to the surplus plant or to the contracting distributors.

3. The amount of the loss, determined as aforesaid, shall be divided by the total of all delivered base, expressed in terms of pounds of butterfat, whether to contracting distributors or to the surplus plant, the resulting figures being the amount per pound of butter fat which it is necessary to charge back against delivered bases of all producers in order to obtain the adjusted base price.

4. The difference between the full base price determined according to the provisions of Exhibit A, Schedule I, and Exhibit A, Schedule III, and the aforesaid loss per pound of butterfat determined as in the preceding paragraph, shall be the adjusted base price to be paid to all producers, whether delivering to contracting distributors or to the surplus plant, for deliveries not in excess of their respective bases.

5. The difference between the base price and the adjusted base price in respect to the base milk of all producers delivering to contracting distributors which difference is payable to Producers' Arbitration Committee, Inc., in accordance with the provisions of paragraph 5 of this Agreement when added to the similar deduction made directly by the surplus plant in respect of the base milk of all producers delivering to the surplus plant, results in a uniform adjusted base price for deliveries not in excess of base quantities of all producers.

6. Producers' Arbitration Committee, Inc., shall secure the necessary data from the contracting distribu-

tors and from the surplus plant, shall compute the foregoing adjustments each month, shall submit a statement containing such adjustments to the Los Angeles Milk Industry Board for its approval, and upon its approval shall notify distributors and producers as to the payments to be made by them respectively in accordance with the foregoing principles. It shall also cause to be paid the adjusted base price and/or surplus price to producers delivering base milk and/or surplus milk to the surplus plant.

7. Any sums deducted by the Producers' Arbitration Committee, Inc. and retained as working capital for the operation of the plant as provided in paragraph 1 of this Exhibit C shall be set up on the books of the Producers' Arbitration Committee, Inc. as a separate fund to the credit of each producer from whom such funds were deducted; and in case of liquidation of Producers' Arbitration Committee, Inc. or discontinuance of business by contributing producers there shall be paid back to each producer the proportion of the total net worth of the Association which his contribution is to the total of all sums so contributed. Producers' Arbitration Committee, Inc., shall develop and make effective a financing plan, with approval of the Los Angeles Milk Industry Board, to cover such deductions for working capital under which monthly deductions and total accumulations will meet the capital needs of the Producers' Arbitration Committee, Inc. without accumulation of unnecessary sums.

8. Producers' Arbitration Committee, Inc. may make such regulations as may be necessary to carry out the operations of the surplus plant and adjustment of prices

to producers in accordance with the foregoing principles, such regulations to be subject to the approval of the Los Angeles Milk Industry Board and the Secretary.

9. In the event the daily average quantity of milk sold for consumption as whole milk in the Los Angeles Sales Area becomes so decreased or increased as to render impractical, in the opinion of the Los Angeles Milk Industry Board, the accounting for such variations through adjustments in the base price said producers as provided in paragraph 4, Schedule "C," the Producers' Arbitration Committee, Inc. shall with the approval of the Los Angeles Milk Industry Board and the Secretary, make such uniform increases or decreases, as the case may be, in all existing established bases of producers, as will cause the sum total of all bases adjusted as aforesaid, to again approximate in amount the daily average quantity of milk sold for consumption as whole milk in the Los Angeles Sales Area.

EXHIBIT D

LOS ANGELES MILK INDUSTRY BOARD

1. The Los Angeles Milk Industry Board shall be composed of thirteen members all of whose appointments shall be subject to the approval of the Secretary, to wit:

(a) Six producers. Five of these shall be selected by the Producers' Arbitration Committee, Inc. (One from each of the following five member associations:—California Milk Producers' Association, Independent Milk Producers' Association, Los Angeles County Natural Milk Producers' Association, Los Angeles Mutual

Dairymen's Association, Southern California Bottled Raw Milk Association). The sixth producer shall be selected by producers not members of the five associations of producers mentioned above, provided, however, that if such producers have not selected a member within five days after the effective date of this Agreement, Producers' Arbitration Committee, Inc., shall select such sixth member from among producers not members of any of the aforementioned five associations.

(b) Six distributors. Four of these shall be selected by the Southern California Milk Dealers Association. One of these shall be selected by the Independent Milk Distributors Association, Inc. The sixth distributor shall be selected by distributors not members of either of said association, provided, however, that if such distributors shall not have selected a member within five days after the effective date of this Agreement, the five distributor members selected as above provided shall select such sixth member.

(c) The thirteenth member shall be selected by two-thirds vote of the twelve selected as specified in (a) and (b) above and such thirteenth member shall be the Chairman of the Board.

2. The duties of the Los Angeles Milk Industry Board in addition to those specifically set forth elsewhere in this Agreement shall be to compile statistics and make surveys of costs and methods of production and distribution in the Los Angeles market, either alone or in collaboration with other agencies engaged in similar projects; to formulate a program for improving the quality of milk and the standards of the Industry generally in the Los Angeles market; to arbitrate disputes

and to engage in advertising and sales promotion work which will further the interests of the industry.

(a) Subject to the approval of the Secretary, the Los Angeles Milk Industry Board may make such further rules, regulations and/or arrangements, not inconsistent with this Agreement or with those which have been established by the Secretary, as may be necessary to carry out the plans and principles set forth in this Agreement.

3. In the exercise of any powers or duties under this Agreement:

(a) The Los Angeles Milk Industry Board shall not be liable for any damage caused by any acts or omissions of its members, whether acting individually or collectively as a Board.

(b) No member of Los Angeles Milk Industry Board shall be liable for any damages caused by the acts or omissions of any other member.

(c) No member shall be liable for any damages caused by his own acts or omissions, unless such acts or omissions involve fraud or willful misconduct on the part of such member.

EXHIBIT E

RULES OF FAIR PRACTICES

The following practices are considered unfair and shall not be engaged in by contracting distributors or by their officers, employees or agents:

(1) Any method or device whereby fluid milk is sold or offered for sale at a price less than stated in this agreement, whether by any discount, rebate, free service, merchandise, advertising allowance, credit for bulk fluid

milk returned, loans or credits outside of the usual course of business or other valuable consideration or combined price for such milk together with another commodity sold or offered for sale, whether separately or otherwise, or whether a subsidy is given for either business or information or assistance in procuring business; or whereby business is obtained, or sought to be obtained, by misrepresentation as to any article listed in Exhibit B.

(2) For any contracting Distributor (a) to sell any fluid milk in a territory which within one year last past has been covered by him in any capacity for another distributor or (b) to cause to be sold through an agent or employee fluid milk in any territory which such agent or employee has within one year last past covered in any capacity for another distributor.

(3) The failure of any contracting distributor to invoice daily 3c per bottle for any bottle difference, over or under, for any milk delivery at any wholesale stop, or to settle for the same when the milk is paid for.

EXHIBIT "F"

CREAM BUYING PLAN

1. The plants of the contracting distributors located in the counties listed in Exhibit "A," Schedule II, shall take delivery for distribution as Grade A Market Cream only of Grade "A" milk which is delivered from producers in the Los Angeles Cream Shed. Such producers for the present are not to receive bases but shall be subject to the provisions of this cream buying plan.

2. There shall be an adjustment in each month for deliveries of milk for Grade A Market Cream by each

producer, according to the quality thereof, the deductions to be made from each producer not delivering milk of the highest quality as set forth in Schedule I of this exhibit. The total deductions thus made shall be charged against each producer incurring said penalty and the total of all such deductions shall be handled in the following manner:

(a) If there be no surplus of deliveries of Grade A Milk for Grade A Market Cream above the purchases of Grade A Market Cream by distributors, in the Los Angeles Sales Area, then the total penalties shall be pro rated back to the producers, including those who incurred the penalties, in proportion to the number of pounds of butter fat delivered by them to said plants, respectively.

The foregoing adjustment shall be computed for each month by the accountants of the Los Angeles Cream Clearing Association, who shall secure the necessary data from the several plants and notify them, respectively, of the resulting price adjustments to be made in the case of each producer delivering milk to each such plant for Grade A Market Cream.

(b) If there be a surplus of such deliveries to the plants over the aforesaid requirements of contracting distributors in the Los Angeles Sales Area, then the total amount of the penalties shall be added to the returns received from surplus products as provided in the next succeeding paragraph.

If at any time there be an excess of such deliveries of milk to the plants over the Grade A Market Cream requirements of the contracting distributors in the Los Angeles Sales Area, the plant or plants having such

excess, shall manufacture such excess over requirements into butter or other milk products. The plants disposing of deliveries of milk in the foregoing manner shall be entitled to be reimbursed for the loss sustained (that is to say, the difference between the minimum price which they are obligated to pay producers for said milk in accordance with the provisions of this cream buying plan, exclusive of penalties, and the gross proceeds of manufacturing such milk into butter and powdered skim). Such plants shall report the results of such manufacturing operations to the accountants, who shall cause such plants to be reimbursed out of any penalties incurred by the producers under the provisions of the foregoing paragraph. If such penalties are not sufficient to fully reimburse such plants, the difference shall be charged back against all producers delivering milk for Grade A Market Cream to all the plants, pro rata, in accordance with their deliveries of such milk during such month. If there be any balance of penalties after reimbursing the plants disposing of milk in manufactured products as aforesaid, the remaining balance of such penalties shall be pro rated back to the individual producers in a manner similar to that provided in the preceding paragraph. The foregoing adjustment shall be computed for each month by the accountants of the Los Angeles Cream Clearing Association who shall secure the necessary data from the several plants and shall notify them, respectively, of resulting price adjustments to be made in the case of each producer and of the amount to be paid to the plant or plants entitled to reimbursement.

3. The expenses of the said accountants including reasonable compensation for their services incurred in

the operation of the Cream Buying Plan shall be prorated back to producers of milk for Grade A Market Cream delivering to the aforesaid plants, in proportion to the number of pounds of butterfat delivered by such producers. Such pro rata charges shall be collected by said plants from such producers supplying them and the moneys so collected paid to the accountants.

EXHIBIT "F"

SCHEDULE 1

The specifications for each class of milk for Grade A Market Cream and the deduction applicable to the several classes are as follows:

CLASS I MILK

Flavor and Odor—No. 1 or No. 2 rating.

Must be refrigerated except when delivered to plants in Santa Barbara County.

Bacterial count shall not exceed 25,000 per c.c.

If the milk has a flavor rating of No. 3, there shall be a deduction of 2 cents per pound of butterfat.

CLASS II MILK

Flavor and Odor—No. 1 or No. 2 rating.

Bacterial count shall not exceed 25,000 per c.c.

Class II milk shall be paid for at 1 cent less per pound of butterfat than Class I milk.

If the milk has a flavor rating of No. 3, there shall be a further deduction of 2 cents per pound of butterfat.

CLASS III MILK

Flavor and Odor—No. 1 or No. 2 rating.

Bacterial count shall not exceed 50,000 per c.c.

Class III milk shall be paid for at 2 cents less per pound of butterfat than Class I milk.

If the milk has a flavor rating of No. 3 there shall be a further deduction of 2 cents per pound of butterfat.

CLASS IV MILK

Flavor and Odor—No. 1 or No. 2 rating.

Bacterial count shall not exceed 150,000 per c.c.

Class IV milk shall be paid for at 4 cents less per pound of butterfat than Class I milk.

If the milk has a flavor rating of No. 3, there shall be a further deduction of 2 cents per pound of butterfat.

It is agreed between the contracting producers and the contracting distributors that any quality program for milk for Grade A Market Milk which might be developed by them through the Los Angeles Milk Industry Board and submitted to the Secretary for approval shall not be less stringent than that established herein for milk for Grade A Market Cream.

Since correction of typographical errors may be necessary before signature by the Secretary, you are requested to authorize by signing this authorization.

We, the undersigned, hereby authorize

T. R. Knudsen and Earl Maharg

to consent to the correction of any typographical errors which the Agricultural Adjustment Administration may consider it advisable to make in the Marketing Agree-

ment for milk, Los Angeles Milk Shed, which we have signed on the.....day of.....1933.

Date..... By..... Title

State of California, County of Los Angeles—ss.

B. FRATKIN, being first duly sworn, deposes and says:

That he is the President of VALLEY DAIRY CO., Inc., a corporation, one of the Plaintiffs herein, and that he therefore verifies the foregoing Complaint on behalf of said plaintiffs; that he has read the foregoing Complaint and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters therein stated on information or belief, and as to such matters that he believes it to be true.

B. FRATKIN.

Subscribed and sworn to before me this 11th day of January, 1934.

(SEAL)

STANLEY F. MAURSETH, Notary Public in and for the County and State aforesaid.

[Endorsed]: Complaint-Bill for Injunction. Filed Jan. 11, 1934. R. S. Zimmerman, Clerk. By L. Wayne Thomas, Deputy Clerk.

Lewis D. Collings, Amos Friedman, Walter F. Haas, Harold C. Johnston, Edward M. Selby, William T. Selby, Attorneys for Plaintiffs.

[TITLE OF COURT AND CAUSE]

In Equity No. 144-C

NOTICE OF MOTION

TO THE DEFENDANTS: HARRY W. BERDIE, and to his attorneys WILLIAM H. NEBLETT AND FRANK G. SWAIN: AND TO THE DEFENDANTS LOS ANGELES MILK INDUSTRY BOARD, RICHARD CRONSHEY, WILLIAM CORBETT, DAVID P. HOWELLS, GEORGE A. CAMERON, F. A. LUCAS, EARL MAHARG, A. G. MARCUS, M. H. ADAMSON, T. E. DAY, W. H. STABLER, MAX BUECHERT, C. W. HIBBERT, W. J. KUHRT, GEORGE E. PLATT, A. M. MCOMIE, T. H. BRICE, T. M. ERWIN, A. R. READ, R. C. PERKINS, ROSS WEAVER, and to their attorneys, E. H. WHITCOMBE, FARRAND & SLOSSON and B. DEAN CLANTON, and to the defendants MILK PRODUCERS, INC., a California corporation, ANDERS LARSEN, H. C. DARGER and PIERSON M. HALL, as UNITED STATES DISTRICT ATTORNEY FOR THE SOUTHERN DISTRICT OF CALIFORNIA:

YOU AND EACH OF YOU will please take notice that the plaintiffs will present to His Honor, GEORGE COSGRAVE, Judge of the District Court of the United States for the Southern District of California, Central Division, at the court room of said Judge in the Federal Building, Temple and Main Streets, Los Angeles, California, on the 20th day of August, A. D. 1934, at the hour of ten o'clock A. M., of said day, or as soon thereafter as counsel may be heard, a motion, a copy of which is hereto attached, praying for permission to file a Supplemental Bill in the above cause and upon the grounds therein stated.

ment for milk, Los Angeles Milk Shed, which we have signed on the.....day of.....1933.

.....
Date..... By.....
Title

State of California, County of Los Angeles—ss.

B. FRATKIN, being first duly sworn, deposes and says:

That he is the President of VALLEY DAIRY CO., Inc., a corporation, one of the Plaintiffs herein, and that he therefore verifies the foregoing Complaint on behalf of said plaintiffs; that he has read the foregoing Complaint and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters therein stated on information or belief, and as to such matters that he believes it to be true.

B. FRATKIN.

Subscribed and sworn to before me this 11th day of January, 1934.

(SEAL)

STANLEY F. MAURSETH,
Notary Public in and for the County
and State aforesaid.

[Endorsed]: Complaint-Bill for Injunction. Filed Jan. 11, 1934. R. S. Zimmerman, Clerk. By L. Wayne Thomas, Deputy Clerk.

Lewis D. Collings, Amos Friedman, Walter F. Haas, Harold C. Johnston, Edward M. Selby, William T. Selby, Attorneys for Plaintiffs.

[TITLE OF COURT AND CAUSE]

In Equity No. 144-C

NOTICE OF MOTION

TO THE DEFENDANTS: HARRY W. BERDIE, and to his attorneys WILLIAM H. NEBLETT AND FRANK G. SWAIN: AND TO THE DEFENDANTS LOS ANGELES MILK INDUSTRY BOARD, RICHARD CRONSHIEY, WILLIAM CORBETT, DAVID P. HOWELLS, GEORGE A. CAMERON, F. A. LUCAS, EARL MAHARG, A. G. MARCUS, M. H. ADAMSON, T. E. DAY, W. H. STABLER, MAX BUECHERT, C. W. HIBBERT, W. J. KUHRT, GEORGE E. PLATT, A. M. McOMIE, T. H. BRICE, T. M. ERWIN, A. R. READ, R. C. PERKINS, ROSS WEAVER, and to their attorneys, E. H. WHITCOMBE, FARRAND & SLOSSON and B. DEAN CLANTON, and to the defendants MILK PRODUCERS, INC., a California corporation, ANDERS LARSEN, H. C. DARGER and PIERSON M. HALL, as UNITED STATES DISTRICT ATTORNEY FOR THE SOUTHERN DISTRICT OF CALIFORNIA:

YOU AND EACH OF YOU will please take notice that the plaintiffs will present to His Honor, GEORGE COSGRAVE, Judge of the District Court of the United States for the Southern District of California, Central Division, at the court room of said Judge in the Federal Building, Temple and Main Streets, Los Angeles, California, on the 20th day of August, A. D. 1934, at the hour of ten o'clock A. M., of said day, or as soon thereafter as counsel may be heard, a motion, a copy of which is hereto attached, praying for permission to file a Supplemental Bill in the above cause and upon the grounds therein stated.

That said motion is made upon the files and records of the within action, including the verified Bill of Complaint heretofore filed herein, and upon a Supplemental Complaint, a verified copy of which is attached hereto as aforesaid.

Dated: August 9th, 1934.

EDWARD M. SELBY

Edward M. Selby

LEWIS D. COLLINGS

Lewis D. Collings

WALTER F. HAAS

Walter F. Haas

H. C. JOHNSTON

H. C. Johnston

Attorneys for Plaintiffs

(Endorsed): Notice of Motion. Filed Aug. 11, 1934, R. S. Zimmerman, Clerk. By L. Wayne Thomas, Deputy Clerk.

[TITLE OF COURT AND CAUSE]

In Equity No. 144-C

MOTION FOR LEAVE TO FILE SUPPLEMENTAL
BILL OF COMPLAINT FOR INJUNCTION.

COME NOW the plaintiffs and move the above entitled court for leave to file a Supplemental Bill of Complaint for Injunction herein, and respectively show as follows, to-wit:

That on the 11th day of January, 1934, the said plaintiffs filed their Bill in this Honorable Court against the defendants herein for the purpose of having the said court adjudge and decree that License for Milk, Los

Angeles Milk Shed, License No. 17, issued by the Secretary of Agriculture of the United States on November 16th, 1933 and by authority of an Act known as the National Agricultural Adjustment Act, being the Act of May 12th, 1933, Chapter 25, 48 Statutes, 73 Congress H. R. 3635 of the United States of America, and regulations issued thereunder by the Secretary of Agriculture on July 22nd, 1933, was void and invalid as to the said plaintiffs, and that the said National Agricultural Adjustment Act, the said regulations thereunder, the operations thereof and the enforcement thereof, declared void and invalid as to these defendants, and further praying that the said court at once issue a restraining order enjoining the defendants, and each of them, from making any of the demands and committing any of the acts with relation to the said plaintiffs, as set forth in said Bill of Complaint, and from taking any steps whatsoever to collect from the said plaintiffs the payments mentioned in said complaint and claimed due from the plaintiffs by the defendants under and by virtue of the terms and provisions of said License, and ordering said defendants to show cause why a temporary injunction of like character should not issue, and praying that upon the hearing of said order to show cause a temporary injunction of like character issue, and that upon final hearing said temporary injunction be made permanent, and further praying that this Honorable Court adjudge and decree that said purported License No. 17 is void and invalid as to these plaintiffs.

That the defendants Harry W. Berdie, Los Angeles Milk Industry Board, Milk Producers, Inc., a California

Corporation, Richard Cronshey, William Corbett, David P. Howells, George A. Cameron, F. A. Lucas, Earl Maharg, A. G. Marcus, M. H. Adamson, T. E. Day, W. H. Stabler, Max Buechert, C. W. Hibbert, W. J. Kuhrt, George E. Platt, A. M. McOmie, T. H. Brice, T. M. Erwin, A. R. Read, R. C. Perkins and Ross Weaver, appeared and answered by sworn affidavits and later by verified answer, denying each and every of the material allegations of said Bill of Complaint, affirmatively contending that said License and said National Agricultural Adjustment Act were valid, that the payments sought to be collected thereunder from these plaintiffs were proper, that no Injunction should issue and that they did not intend to enforce by revocation of License or imposition of penalties the said License as against the said plaintiffs.

That since the filing of said suit and at the instance of the said defendants, the Secretary of Agriculture, purporting to act under the authority of said National Agricultural Adjustment Act, instituted proceedings to terminate said License No. 17 as to the plaintiffs and each of them for alleged violations of said License, consisting of among other things, the failure to make payments required by said License and specified in the Bill of Complaint on file herein, and thereafter revoked said License as to all Licensees, issued a new license known as No. 57 purporting to license all distributors of milk in the said Los Angeles Sales Area, among whom are the plaintiffs, and thereafter revoked said License No. 57 as to the said plaintiffs and each of them because of such alleged violations. That since the filing of said Bill

of Complaint as aforesaid, the said defendants, Los Angeles Milk Industry Board and the individual defendant members thereof, and the defendant Milk Producers, Inc., has demanded from the plaintiffs and each of them further payments and sums of money, claiming the same under the terms of said License No. 17, and has threatened to proceed further to attempt to collect the same from said plaintiffs and each of them, and said Milk Producers, Inc., has brought suit in the Superior Court against the plaintiff Lucerne Cream and Butter Company, a corporation, for such collection thereof, and threatens to bring similar suits against the other plaintiffs and each of them for such collection. That the said defendant H. C. Darger is the Milk Administrator appointed by said Secretary of Agriculture under said License No. 57, and has made demands upon the plaintiffs and each of them for payments of various sums of money under the terms and provisions of said License No. 57. That the defendant Anders Larsen is the Enforcement Officer of the Agricultural Adjustment Administration of the United States Department of Agriculture, appointed as such by the Secretary of Agriculture, and claims the right and power of enforcement of the provisions of said Licenses No. 17 and No. 57. That the said defendant Pierson M. Hall is the duly appointed, qualified and acting United States District Attorney for the Southern District of California, and the person designated by the terms and provisions of the Agricultural Adjustment Act to institute proceedings to enforce the remedies and collect the forfeitures provided for or pursuant to said Act. That all of said matters, among

other things, appear in the Supplemental Bill of Complaint of said defendants, a verified copy of which is attached hereto and made a part hereof as is fully set forth herein.

That your petitioners are advised that it is necessary to file a Supplemental Bill of Complaint, as attached hereto as aforesaid, herein and to bring in the defendants Anders Larsen, H. C. Darger, and Pierson M. Hall, sued herein as fictitious defendants, as defendants herein, to the original Bill of Complaint and the said Supplemental Bill of Complaint, and pray that your petitioners, plaintiffs, herein, be granted leave to file said Supplemental Bill for the purposes of stating facts and matters relevant herein and occurring since the filing of the original Bill as against all defendants, including the defendants Anders Larsen, H. C. Darger and Pierson M. Hall, as United States District Attorney for the Southern District of California, and for such other general and special relief as may be proper.

That said motion is made upon the files and records of the within action, including the verified Bill of Complaint heretofore filed herein, and upon a Supplemental Complaint, a verified copy of which is attached hereto as aforesaid.

EDWARD M. SELBY
Edward M. Selby
LEWIS D. COLLINGS
Lewis D. Collings
WALTER F. HAAS
Walter F. Haas
H. C. JOHNSTON
H. C. Johnston
Attorneys for Plaintiffs

(Endorsed): Filed, Aug. 9, 1934, R. S. Zimmerman, Clerk, by L. Wayne Thomas, Deputy Clerk.

At a stated term, to wit: The February Term, A. D. 1934, of the District Court of the United States of America, within and for the Central Division of the Southern District of California, held at the Court Room thereof, in the City of Los Angeles on Tuesday the 4th day of September in the year of our Lord one thousand nine hundred and thirty-four.

Present:

The Honorable Geo. Cosgrave, District Judge.

Charles J. Kurtz, etc. Plaintiff,

vs.

Harry W. Berdie, et al. Defendants.

No. Eq.-144-C.

This cause coming before the Court, at this time, for hearing on:

(1) Order to Show Cause and Restraining Order, filed August 9th, 1934, on Supplemental Bill in Equity of plaintiffs, directed to defendants to show cause why a Temporary Injunction should not issue, etc.;

(2) Motion of Harry W. Berdie, for himself alone, for an Order vacating or dissolving the Temporary Restraining Order issued on August 9th, 1934, pursuant to Notice filed August 29th, 1934, and for an Order Dismissed the above entitled proceedings, pursuant to Notice filed August 29th, 1934;

(3) Motion of defendants, Los Angeles Milk Industry Board, et al. for an Order vacating or dissolving the

Temporary Restraining Order, issued on August 9th, 1934, pursuant to Notice filed August 28th, 1934, and for an Order Dismissing the above entitled proceedings, pursuant to Notice filed August 28th, 1934;

(4) Motion of defendant Milk Producers, Inc., a California corporation, for an order vacating or dissolving the Temporary Restraining Order issued by this Court on August 9th, 1934, pursuant to Notice filed August 28th, 1934, and for an Order Dismissing the above entitled proceedings, pursuant to Notice filed August 28th, 1934; and,

(5) Motion of Anders Larsen, et al., for an Order vacating or dissolving the Temporary Restraining Order issued by this Court on August 9th, 1934, pursuant to Notice filed September 1st, 1934;

Lewis D. Collings, Harold C. Johnston and Edward M. Selby, Esqs., appearing for the plaintiffs; Peirson M. Hall, U. S. Attorney, and Clyde Thomas, Assistant U. S. Attorney, appearing for defendants Harry W. Berdie, Anders Larsen, H. C. Darger and Peirson M. Hall; Leonard B. Slosson, Esq., of the law firm of Messrs. Farrand & Slosson, appearing for defendants Los Angeles Milk Industry Board, et al. and for defendant Milk Producers, Inc., a California corporation; and, there being no court reporter present, it appears to the Court that on September 1st, 1934, Objections to the Application of the plaintiffs for a Preliminary Injunction, and to the Application of the plaintiffs for leave to file Supplemental Bill of Complaint were filed by Anders Larsen, H. C. Darger and Peirson M. Hall, the said H. C. Johnston, Esq., argues to the Court in sup-

port of the plaintiffs' Application to file said Supplemental Bill of Complaint, following which Leonard B. Slosson and Peirson M. Hall, Esqs., in behalf of their clients, argue to the Court, respectively, in opposition to the Motion of the plaintiffs to file Supplemental Bill and in support of Motion of Anders Larson, et al (No. (5) supra) to vacate or dissolve the Temporary Restraining Order; whereupon, Leonard B. Slosson, Esq., argues to the Court in behalf of his clients in opposition to the Motion of the plaintiffs to file said Supplemental Bill, and H. C. Johnston, Esq., thereafter arguing further to the Court, it is now ordered that said Supplemental Bill of Complaint, now on file, be filed by the Clerk, that the Objections of the defendants thereto be overruled. An Exception is noted.

Peirson M. Hall, Esq., now argues to the Court in support of the Motion of Harry W. Berdie for an Order vacating or dissolving the Temporary Restraining Order and in support of the Motion of Harry W. Berdie for an Order dismissing the above entitled proceedings (No. 2 supra), after which Lewis D. Collings, Esq., argues to the Court in opposition thereto; whereupon, the Court makes a statement and orders said Motions of Harry W. Berdie (No. 2 supra) be, and the same are hereby, denied. An exception is noted.

Leonard B. Slosson, Esq., now argues to the Court in support of the Motion of defendants Los Angeles Milk Industry Board, et al. (No. 3 supra), and the Motion of the defendant Milk Producers, Inc., a California corporation, (No. 4 supra) for an Order vacating or dissolving the Temporary Restraining Order and in support of the

Motion of said defendants for an Order dismissing the above entitled proceedings as to said defendants, and Lewis D. Collings, Esq., thereafter argues to the Court in opposition thereto; whereupon, the Court orders that said Motions, Nos. 1, 3, 4 and 5, stand submitted for the decision of the Court.

[TITLE OF COURT AND CAUSE]

In Equity No. 144-C

SUPPLEMENTAL BILL OF COMPLAINT FOR
INJUNCTION.

To the Honorable George Cosgrave, Judge of the above
entitled Court:

The above named plaintiffs bring this their supplemental bill of complaint against the above named defendants and in so doing allege and represent to the above entitled court as follows, to-wit:

I.

That the defendant Anders Larsen, named in the original bill for injunction herein as John One, is, as plaintiffs are informed and believe and upon such information and belief allege the facts to be, the enforcement officer of the Agricultural Adjustment Administration of the United States Department of Agriculture for the Los Angeles sales area, appointed as such by the Secretary of Agriculture of the United States, and in like manner plaintiffs allege that the said Anders Larsen assumes and claims the right and power of enforcement of the provisions of the milk license attached to the original complaint herein and designated herein-

after as License No. 17 of said Agricultural Adjustment Administration, and also of the license attached hereto and marked Exhibit "C," hereinafter referred to, and also referred to as License No. 57; and in like manner assumes and claims the right and power of enforcement of the orders of the Secretary of Agriculture dated July 28, 1934, purportedly forfeiting the licenses of plaintiffs, as is more fully set forth hereinafter.

II.

That the defendant H. C. Darger, sued herein in the original complaint as John Two, as plaintiffs are informed and believe, and upon such information and belief allege, is market administrator, appointed as such by the Secretary of Agriculture of the United States under and pursuant to the terms and provisions of the purported License No. 57, attached hereto and marked Exhibit "C," which said purported license is designated "License for Milk, Los Angeles, California Sales Area," hereinafter specified and referred to; and in like manner plaintiffs allege that said H. C. Darger assumes and claims the right and power of enforcement of the provisions of said purported License No. 57.

III.

That defendant Pierson M. Hall, sued in the original bill of complaint for injunction herein as John Three, as plaintiffs are informed and believe and upon such information and belief allege, is the duly appointed, qualified and acting United States District Attorney for the Southern District of California, and is the person designated by the terms and provisions of the Agricultural Adjustment Act, more particularly Section 8 (a),

subdivision 7 thereof, to institute proceedings to enforce the remedies and to collect the forfeitures provided for in or pursuant to said Agricultural Adjustment Act.

IV.

That the defendants Anders Larsen, sued herein as John One, H. C. Darger, sued herein as John Two, Pierson M. Hall, as United States District Attorney for the Southern District of California, sued herein as John Three, John Four, John Five, John Six, John Seven, John Eight, John Nine, John Ten, John One Company, a co-partnership, John Two Company, a co-partnership, John Three Company, a co-partnership, John One Company, a corporation, John Two Company, a corporation, and John Three Company, a corporation, were and are sued herein under fictitious names, their true names being unknown to plaintiffs at the time of the filing of the original complaint herein and at this time, except as to such fictitious defendants now named by their true names, and leave of Court will be asked to substitute their true names when and if the same are ascertained; each of said defendants sued herein under fictitious names claims or claims to have some right or authority to act in the enforcement as against these plaintiffs of the provisions of said purported License No. 17 (Exhibit "A" in plaintiffs' original bill) and said purported License No. 57 hereinafter referred to and specified, and of the orders of the Secretary of Agriculture, dated July 28, 1934, purportedly forfeiting the licenses of plaintiffs, as is more fully set forth hereinafter.

V.

Plaintiffs further allege and show that the matters in controversy in this suit and the questions involved therein

are questions arising under the Constitution and the laws of the United States of America, and that the subject-matter sought to be protected by this suit, to-wit, the business of each of said plaintiffs and the right of each of said plaintiffs to continue and to carry on the conduct and operation of the same without interference on the part of the defendants, all as hereinafter set forth, is severally of a value greatly in excess of Three Thousand Dollars.

VI.

On the 25th day of August, 1933, the Secretary of Agriculture of the United States did make, prescribe and publish General Regulations, Series 3, and the same were approved by the President of the United States on the 26th day of August, 1933. Said General Regulations, Series 3, so far as pertinent, are as follows:

“ARTICLE I

“Definitions

“Section 100. As used in these regulations:

“(a) The term “act” means the Agricultural Adjustment Act, approved May 12, 1933, as amended.

“(b) The term “Secretary” means the Secretary of Agriculture of the United States.

“(c) The term “Department” means the United States Department of Agriculture.

“(d) The term “person” means an individual, corporation, partnership, unincorporated association, or any other business unit.

“(e) The term “License” means any license which has been issued by the Secretary pursuant to section 8 (3) of the Act.

"ARTICLE II

"PROVISIONS RELATING TO THE REVOCATION OR SUSPENSION OF LICENSES AND THE PROCEDURE IN CONNECTION THEREWITH.

"Section 200. Whenever the Secretary, or such officer or employee of the Department as he may designate for the purpose, has reason to believe that any licensee, or any officer, employee, or agent of any licensee, or any other person with the consent or connivance of such licensee, has violated or is violating the terms or conditions of a license, the Secretary, or such officer or employee of the Department as he may designate for the purpose, may, by notice served personally upon such licensee, or any agent of such licensee in active charge of the business licensed, or by depositing in the United States mails a notice in writing, registered and addressed to such licensee at the last known business address of such licensee, order such licensee to show cause in writing on or before a certain date to be named in said notice, why the Secretary should not revoke or suspend such license.

"Sec. 201. Said notice shall contain:

"(a) A statement of the alleged violations of the terms or conditions of the license.

"(b) A statement of the time (which shall not be less than 10 days after service or mailing of such notice, as required by sec. 200) within which the licensee must comply with said order by filing, at such place and with such person as shall be designated in the notice, a written answer in triplicate to the charges alleged in said notice.

“Sec. 202. A copy of the aforesaid notice shall be filed in the office of the chief hearing clerk in the Department of Agriculture, Washington, D. C. and shall be available for public inspection in such office.

“Sec. 203. (a) Within the time required by the notice, the licensee shall file, at such place and with such person as shall be designated in the notice, a written answer in triplicate to the charges contained in such notice.

“(b) Said answer shall be divided into paragraphs and shall contain categorical admissions or denials of the several charges and facts alleged in said notice, and all denials therein contained shall be amplified by full and frank statements of the facts concerning said alleged violations, and the matters of defense relied upon.

“(c) Said answer shall contain a statement of the correct name and address of the licensee to whom the order has been mailed or sent. If said licensee is incorporated, such fact shall be stated together with the name of the State of incorporation and the names and addresses of its officers and directors. If such licensee is a member of an unincorporated association, partnership, or other business unit licensed, said answer shall disclose the correct names and addresses of all the members constituting said business unit.

“(d) If the licensee is not a natural person, said answer shall contain the name and address of an individual, as agent of said licensee to whom notice of further proceedings may be mailed or sent and for no other purpose. Such answer shall be supported by an affidavit to the truth of the matters stated therein made by the licensee or a duly authorized agent of the licensee who has knowledge of the facts.

“Sec. 204. Upon proper cause shown, the Secretary, or such officer or employee of the Department as he may designate for the purpose, may extend the time within which such answer shall be filed, provided, application for such extension be made within the time to show cause set forth in said notice.

“Sec. 205. The parties to every such proceeding shall be the Secretary, who shall enter an appearance and be represented by counsel, and the licensee, who may appear in proper person or by counsel. Any other person desiring to intervene in such proceeding shall make an application to the Secretary to be made a party thereto, setting forth the grounds on which such person claims to be interested, and the Secretary, or such officer or employee of the Department as he may designate for the purpose, may, by order, permit the intervention of such person, in proper person or by counsel, to such extent and upon such terms as may be deemed just.

“Sec. 206. If the Secretary finds the answer of such licensee to be sufficient, such licensee shall be duly notified of the dismissal of the proceedings initiated by said notice, and an order of dismissal shall be filed in the office of the chief hearing clerk.

“Sec. 207. If the proceedings be not dismissed by the Secretary, the Secretary, or such officer or employee of the Department as he may designate for the purpose, may appoint a time (which shall not be earlier than 5 days after the date on which the answer is required to be filed) and designate a place for a hearing to be held in the State where the licensee's principal place of business is located, or in Washington, D. C., or at any other

place mutually agreeable to the Secretary and the licensee. The Secretary or such officer or employee of the Department as he may designate for the purpose shall at least 5 days prior to the hearing give or mail to the licensee, in the manner provided in section 200, or to the agent of the licensee designated in the answer of the licensee as the person to whom such notice may be mailed or sent, a written notice, which notice shall specify the time, place and purpose of said hearing.

“Sec. 208. Every such hearing shall be conducted by a presiding officer, who shall be the Secretary, or such officer or employee of the Department as the Secretary may designate for the purpose. Any such designation may be made or revoked by the Secretary at any time before or during any hearing. Such hearing shall be conducted in the manner to be determined by the presiding officer as will best conduce to the proper dispatch of business and the attainment of justice.”

VII.

That said defendant, Los Angeles Milk Industry Board, and the individual defendants named herein as the members of said board, demanded of these plaintiffs and each of them that they file with the chairman of said board prior to February 5, 1934, and prior to the 5th day of each of the months of March, April, May and June, 1934, a statement as required by said purported License No. 17, as set forth in paragraphs XII and XXII of plaintiff's original bill for injunction.

VIII.

That said defendant Los Angeles Milk Industry Board, and the individual defendants named herein as members thereof, have demanded of these plaintiffs and

each of them that they and each of them deduct from the amount payable to each producer from whom each of said plaintiffs as a distributor purchased milk during the times commencing December 1, 1933, and ending December 31, 1933, both dates inclusive, and commencing January 1, 1934, and ending January 31, 1934, both dates inclusive, and pay to said board certain sums equaling in amount one-quarter cent for each pound of butter fat contained in the milk purchased by each of said plaintiffs as a distributor, and in cases where one or more of the plaintiffs are distributors having production of their own, have demanded of said plaintiffs that they deduct a like amount for each pound of butter fat contained in milk produced and sold by them during said periods and each said period, and pay the same to the Los Angeles Milk Industry Board; said defendants have also demanded of plaintiffs, and each of them, that whether they have production of their own or not they pay, as distributors, to said Los Angeles Milk Industry Board sums equaling an additional amount of one-quarter cent for each pound of butter fat contained in the milk distributed by each of said plaintiffs during said period. Said demands were made under and by virtue of the provisions of Section III, paragraph 4 (b) of said purported license, a copy of which is annexed to the original bill of complaint and marked Exhibit "A". Upon their information and belief plaintiffs allege that said amounts were not calculated in accordance with the provisions of said purported license.

IX.

That said defendant Los Angeles Milk Industry Board, and the individual defendants named herein as

members of said board, have demanded of these plaintiffs and each of them that they and each of them deduct from the amount payable to each producer from whom each of plaintiffs as a distributor purchased milk during the times commencing December 1, 1933, and ending December 31, 1933, both dates inclusive, and January 1, 1934, to January 31, 1934, both dates inclusive, and pay to said board an amount for each pound of butter fat contained in milk purchased from each of the producers who sell to said plaintiffs, claimed by them to be equal to the average amount which the members of the several associations or organizations of milk producers named in said purported license were then authorizing their distributors to pay over to such associations or organizations on behalf of their respective members, and that similar payments be made by plaintiffs having production of their own. That none of the producers from whom plaintiffs are so purchasing milk is, or at any of said times was, a member of any of said associations or organizations, and that none of plaintiffs is such member. The specific amount which said defendants have demanded of these plaintiffs under this head for the period above mentioned is eight-tenths of a cent for each pound of butter fat contained in the milk so purchased and/or produced in December, 1933, and .52 of a cent for each pound of butter fat contained in the milk so purchased and/or produced in January, 1934. Said demands were made under and by virtue of the provisions of Section III, paragraph 4 (c) of said purported license, a copy of which is annexed to plaintiff's original bill herein and marked Exhibit "A". Upon their information and belief plaintiffs allege that said amounts were not calculated

in accordance with the provisions of said purported license.

X.

That said defendant Los Angeles Milk Industry Board and the individual defendants named herein as the members of said board and said Milk Producers, Inc., have demanded of these plaintiffs and each of them that they and each of them deduct from the amount payable to each producer from whom each of said plaintiffs as a distributor purchased milk during the time commencing December 1, 1933, and ending December 31, 1933, both dates inclusive, and commencing January 1, 1934, and ending January 31, 1934, both dates inclusive, and pay over to said defendants certain specific amounts of money claimed by them to have been calculated as provided in Section III, paragraphs 5 (a), (b), and (c), of said purported License No. 17, and have demanded that similar payments for the same periods be made by plaintiffs having production of their own. That for the month of December, 1933, said board has determined said amount to be 31c per pound of butter fat, being the difference between the base price of 51c per pound and the surplus price of 20c per pound of butter fat, and has fixed for said period of December, 1933, a further charge of 1c per pound of butter fat, designating the same as "deduction from adjusted basic average," and for said period of January, 1934, said board determined said amount to be 31½c per pound of butter fat, being the difference between the base price of 51c per pound and the surplus price of 19½c per pound of butter fat. Said demands were made arbitrarily and were purported to be made under and by virtue

of the sections of said purported license. Upon their information and belief plaintiffs allege that said amounts were not calculated in accordance with the provisions of said purported license.

XI.

That said defendant Los Angeles Milk Industry Board, and the individual defendants named herein as members thereof, have demanded of these plaintiffs and each of them that they and each of them deduct from the amount payable to each producer from whom each of said plaintiffs as a distributor purchased milk during the time commencing February 1, 1934, and ending February 28, 1934, both dates inclusive, and pay to said board certain sums equaling in amount one-quarter cent for each pound of butter fat contained in the milk purchased by each of said plaintiffs as a distributor, and in cases where one or more of the plaintiffs are distributors having production of their own, have demanded of said plaintiffs that they deduct a like amount for each pound of butter fat contained in milk produced and sold by them during said period and pay the same to the Los Angeles Milk Industry Board; said defendants have also demanded of plaintiffs, and each of them, that whether they have production of their own or not they pay, as distributors, to said Los Angeles Milk Industry Board sums equaling an additional amount of one-quarter cent for each pound of butter fat contained in the milk distributed by each of said plaintiffs during said period. Said demands were made under and by virtue of the provisions of Section III, paragraph 4 (b) of said purported license, a copy of which is annexed to the original bill of plaintiff herein and marked Exhibit "A." Upon

their information and belief plaintiffs allege that said amounts were not calculated in accordance with the provisions of said purported license.

XII.

That said defendant Los Angeles Milk Industry Board, and the individual defendants named herein as members of said board, have demanded of these plaintiffs, and each of them, that they and each of them deduct from the amount payable to each producer from whom each of plaintiffs as a distributor purchased milk during the time commencing February 1, 1934, and ending February 28, 1934, both dates inclusive, and pay to said board an amount for each pound of butter fat contained in milk purchased from each of the producers who sell to said plaintiffs, claimed by them to be equal to the average amount which the members of the several associations of milk producers named in said purported license were then authorizing their distributors to pay over to such associations or organizations on behalf of their respective members, and that similar payments be made by plaintiffs having production of their own. That none of the producers from whom plaintiffs are so purchasing milk, and none of plaintiffs is, or at said time was, a member of any of said organizations or associations. The specific amount which said defendants have demanded of these plaintiffs under this head for the period above mentioned is sixty-six hundredths of a cent for each pound of butter fat contained in the milk so purchased and/or produced in February, 1934. Said demands were made under and by virtue of the provisions of Section III, paragraph 4 (c) of said purported license, a copy of which is annexed to plain-

tiff's original bill herein and marked Exhibit "A." Upon their information and belief plaintiffs allege that said amounts were not calculated in accordance with the provisions of said purported license.

XIII.

That said defendant Los Angeles Milk Industry Board and the individual defendants named herein as members of said board and said Milk Producers, Inc., have demanded of these plaintiffs and each of them that they and each of them deduct from the amount payable to each producer from whom each of said plaintiffs as a distributor purchased milk during the time commencing February 1, 1934, and ending February 28, 1934, both dates inclusive, and pay over to said defendants certain specific amounts of money claimed by them to have been calculated as provided in Section III, paragraphs 5 (a), (b), and (c), of said purported License No. 17, and have demanded that similar payments for the same period be made by plaintiffs having production of their own. That for the month of February, 1934, said board has determined said amount to be twenty-six and one-half cents per pound of butter fat, being the difference between the base price of fifty-one cents per pound and the surplus price of twenty-four and one-half cents per pound of butter fat. Said demands were made arbitrarily and purported to be made under and by virtue of said sections of said purported license. Upon their information and belief plaintiffs allege that said amounts were not calculated in accordance with the provisions of said purported license.

XIV.

That said defendant Los Angeles Milk Industry Board, and the individual defendants named herein as members thereof, have demanded of these plaintiffs and each of them that they and each of them deduct from the amount payable to each producer from whom each of said plaintiffs as a distributor purchased milk during the time commencing March 1, 1934, and ending March 31, 1934, both dates inclusive, and pay to said board certain sums equaling in amount one-quarter cent for each pound of butter fat contained in the milk purchased by each of said plaintiffs as a distributor, and in cases where one or more of the plaintiffs are distributors having production of their own have demanded of said plaintiffs that they deduct a like amount for each pound of butter fat contained in milk produced and sold by them during said period and pay the same to the Los Angeles Milk Industry Board; said defendants have also demanded of plaintiffs, and each of them, that whether they have production of their own or not they pay, as distributors, to said Los Angeles Milk Industry Board sums equaling an additional amount of one-quarter cent for each pound of butter fat contained in the milk distributed by each of said plaintiffs during said period. Said demands were made under and by virtue of the provisions of Section III, paragraph 4 (b) of said purported license, a copy of which is annexed to plaintiffs' original bill herein and marked Exhibit "A." Upon their information and belief plaintiffs allege that said amounts were not calculated in accordance with the provisions of said purported license.

XV.

That said defendant Los Angeles Milk Industry Board, and the individual defendants named herein as members of said board, have demanded of these plaintiffs and each of them that they and each of them, deduct from the amount payable to each producer from whom each of the plaintiffs as a distributor purchased milk during the time commencing March 1, 1934, and ending March 31, 1934, both dates inclusive, and pay to said board an amount for each pound of butter fat contained in milk purchased from each of the producers who sell to said plaintiffs which they claim to be equal to the average amount which the members of the several associations or organizations of milk producers named in said purported license were then authorizing their distributors to pay over to such associations or organizations on behalf of their respective members, and that similar payments be made by plaintiffs having production of their own. That none of the producers from whom plaintiffs are so purchasing milk and none of plaintiffs is, or at said time was, a member of any of said associations or organizations. The specific amount which said defendants have demanded of these plaintiffs under this head for the period above mentioned is six-tenths of a cent for each pound of butter fat contained in the milk so purchased and/or produced in March, 1934. Said demands were made under and by virtue of the provisions of Section III, paragraph 4 (c) of said purported license, a copy of which is annexed to plaintiffs' original bill herein and marked Exhibit "A." Upon their information and belief plaintiffs allege that said amounts were not cal-

culated in accordance with the provisions of said purported license.

XVI.

That said defendant Los Angeles Milk Industry Board and the individual defendants named herein as the members of said Board, and said Milk Producers, Inc., have demanded of these plaintiffs and each of them that they and each of them deduct from the amount payable to each producer from whom each of said plaintiffs as a distributor purchased milk during the time commencing March 1, 1934, and ending March 31, 1934, both dates inclusive, and pay over to said defendants certain specific amounts of money claimed by them to have been calculated as provided in Section III, paragraphs 5 (a), (b) and (c) of said purported License No. 17, and have demanded that similar payments for the same period be made by plaintiffs having production of their own. That for the month of March, 1934, said board has determined said amount to be twenty-seven cents per pound of butter fat, being the difference between the base price of fifty-one cents per pound and the surplus price of twenty-four cents per pound of butter fat. Said demands were made arbitrarily and purported to be made under and by virtue of the sections of said purported license. Upon their information and belief plaintiffs allege that said amounts were not calculated in accordance with the provisions of said purported license.

XVII.

That said defendant Los Angeles Milk Industry Board, and the individual defendants named herein as members thereof, have demanded of these plaintiffs and each of them that they and each of them deduct from the amount

payable to each producer from whom each of said plaintiffs as a distributor purchased milk during the time commencing April 1, 1934, and ending April 30, 1934, both dates inclusive, and pay to said board certain sums equaling in amount one-quarter of a cent for each pound of butter fat contained in the milk purchased by each of said plaintiffs as a distributor, and in cases where one or more of the plaintiffs are distributors having production of their own have demanded of said plaintiffs that they deduct a like amount for each pound of butter fat contained in milk produced and sold by them during said period and pay the same to the Los Angeles Milk Industry Board; said defendants have also demanded of plaintiffs, and each of them, that, whether they have production of their own or not, they pay as distributors to said Los Angeles Milk Industry Board sums equaling an additional amount of one-quarter of a cent for each pound of butter fat contained in the milk distributed by each of said plaintiffs during said period. Said demands were made under and by virtue of the provisions of Section III, paragraph 4 (b) of said purported license, a copy of which is annexed to plaintiffs' original bill herein and marked Exhibit "A." Upon their information and belief plaintiffs allege that said amounts were not calculated in accordance with the provisions of said purported license.

XVIII.

That said defendant Los Angeles Milk Industry Board, and the individual defendants named herein as members of said board, have demanded of these plaintiffs and each of them that they and each of them deduct from the amount payable to each producer from whom each of

the plaintiffs as a distributor purchased milk during the time commencing April 1, 1934, and ending April 30, 1934, both dates inclusive, and pay to said board an amount for each pound of butter fat contained in milk purchased from each of the producers who sell to said plaintiffs which they claim to be equal to the average amount which the members of the several associations or organizations of milk producers named in said purported license were then authorizing their distributors to pay over to such associations or organizations on behalf of their respective members, and that similar payments be made by plaintiffs having production of their own. That none of the producers from whom plaintiffs are so purchasing milk and none of plaintiffs is, or at said times was, a member of any of said associations or organizations. The specific amount which said defendants have demanded of these plaintiffs under this head for the period above mentioned is six-tenths of a cent for each pound of butter fat contained in the milk so purchased and/or produced in April, 1934. Said demands were made under and by virtue of the provisions of Section III, paragraph 4 (c) of said purported license, a copy of which is annexed to plaintiffs' original bill and marked Exhibit "A." Upon their information and belief plaintiffs allege that said amounts were not calculated in accordance with the provisions of said purported license.

XIX.

That said defendant Los Angeles Milk Industry Board and the individual defendants named herein as the members of said board, and said Milk Producers, Inc., have demanded of these plaintiffs and each of them that they

and each of them deduct from the amount payable to each producer from whom each of said plaintiffs as a distributor purchased milk during the time commencing April 1, 1934, and ending April 30, 1934, both dates inclusive, and pay over to said defendants certain specific amounts of money claimed by them to have been calculated as provided in Section III, paragraphs 5 (a), (b) and (c) of said purported License No. 17, and have demanded that similar payments for the same period be made by plaintiffs having production of their own. That for the month of April, 1934, said board has determined said amount to be twenty-nine and one-half cents per pound of butter fat, being the difference between the base price of fifty-one cents per pound and the surplus price of twenty-one and one-half per pound of butter fat, and has fixed for said period of April, 1934, a further charge of three cents per pound of butter fat, designating the same as "deduction from adjusted basic average." Said demands were made arbitrarily and purported to be made under and by virtue of the sections of said purported license. Upon their information and belief plaintiffs allege that said amounts were not calculated in accordance with the provisions of said purported license.

XX.

That said defendant Los Angeles Milk Industry Board, and the individual defendants named herein as members thereof, have demanded of these plaintiffs and each of them that they and each of them deduct from the amount payable to each producer from whom each of said plaintiffs as a distributor purchased milk during the time commencing May 1, 1934, and ending May 31, 1934, both

dates inclusive, and pay to said board certain sums equaling in amount one-quarter of a cent, for each pound of butter fat contained in the milk purchased by each of said plaintiffs as a distributor, and in cases where one or more of the plaintiffs are distributors having production of their own have demanded of said plaintiffs that they deduct a like amount for each pound of butter fat contained in the milk produced and sold by them during said period and pay the same to the Los Angeles Milk Industry Board; said defendants have also demanded of plaintiffs and each of them that whether they have production of their own or not, they pay as distributors to said Los Angeles Milk Industry Board sums equaling an additional amount of one-quarter of a cent for each pound of butter fat contained in the milk distributed by each of said plaintiffs during said period. Said demands were made under and by virtue of the provisions of Section III, paragraph 4 (b) of said purported license, a copy of which is annexed to plaintiffs' original bill and marked Exhibit "A." Upon their information and belief plaintiffs allege that said amounts were not calculated in accordance with the provisions of said purported license.

XXI.

That said defendant Los Angeles Milk Industry Board, and the individual defendants named herein as members of said board, have demanded of these plaintiffs and each of them that they and each of them deduct from the amount payable to each producer from whom each of the plaintiffs as a distributor purchased milk during the time commencing May 1, 1934, and ending May 31, 1934, both dates inclusive, and pay to said board an

amount for each pound of butter fat contained in milk purchased from each of the producers who sell to said plaintiffs claimed by them to be equal to the average amount which the members of the several associations or organizations of milk producers named in said purported license were then authorizing their distributors to pay over to such associations or organizations on behalf of their respective members, and that similar payments be made by plaintiffs having production of their own. That none of the producers from whom plaintiffs are so purchasing milk, and none of plaintiffs is, or at said time was, a member of any of said associations or organizations. The specific amount which said defendants have demanded of these plaintiffs under this head for the period above mentioned is six-tenths of a cent for each pound of butter fat contained in the milk so purchased and/or produced in May, 1934. Said demands were made under and by virtue of the provisions of Section III, paragraph 4 (c) of said purported license, a copy of which is annexed to plaintiffs' original bill and marked Exhibit "A." Upon their information and belief plaintiffs allege that said amounts were not calculated in accordance with the provisions of said purported license.

XXII.

That said defendant Los Angeles Milk Industry Board and the individual defendants named herein as the members of said board, and said Milk Producers, Inc., have demanded of these plaintiffs and each of them that they and each of them deduct from the amount payable to each producer from whom each of said plaintiffs as a distributor purchased milk during the time commencing

May 1, 1934, and ending May 31, 1934, both dates inclusive, and pay over to said defendants certain specific amounts of money claimed by them to have been calculated as provided in Section III, paragraphs 5 (a), (b) and (c) of said purported License No. 17, and have demanded that similar payments for the same period may be made by plaintiffs having production of their own. That for the month of May, 1934, said board has determined said amount to be twenty-nine and one-half cents per pound of butter fat, being the difference between the base price of fifty-one cents per pound and the surplus price of twenty-one and one-half cents per pound of butter fat. Said demands were made arbitrarily and purported to be made under and by virtue of the sections of said purported license. Upon their information and belief plaintiffs allege that said amounts were not calculated in accordance with the provisions of said purported license.

XXIII.

That said defendants Milk Producers, Inc., and Los Angeles Milk Industry Board, and the individual defendants named as members thereof, at the end of each period as aforesaid from November 20, 1933, to May 31, 1934, inclusive, rendered to plaintiffs and each of them a statement making the various demands as hereinbefore set forth, and thereafter and at divers times during said periods have rendered to said plaintiffs and each of them what purported to be various corrected and amended statements, all in different amounts and making different demands for like periods of time, so that plaintiffs and each of them are uncertain as to the exact amounts so claimed to be due to such defendants

Milk Producers, Inc., and Los Angeles Milk Industry Board from plaintiffs herein. Upon their information and belief plaintiffs allege that said amounts were not calculated in accordance with the provisions of said purported license.

XXIV.

That on the 21st day of February, 1934, H. A. Wallace, Secretary of Agriculture of the United States, issued and caused to be served by registered mail upon the plaintiff Charles J. Kurtz, doing business as Golden West Creamery Company, an order to show cause in Case No. 17-1-4 why the said license of the said Charles J. Kurtz should not be suspended or revoked. That said order to show cause contained statements of alleged violations of the terms and conditions of License No. 17 charged against the said Charles J. Kurtz, a copy of which statements is set forth in the findings of fact and order of the Secretary attached hereto, marked Exhibit "D" and hereinafter referred to.

That thereafter and on or about the 9th day of March, 1934, the said plaintiff, Charles J. Kurtz, doing business as Golden West Creamery Company, made and filed an answer to said order to show cause and the charges contained therein and filed the same with the said Secretary of Agriculture.

That on or about the 6th day of March, 1934, said Secretary of Agriculture set the said matter for hearing in Los Angeles, California, on the 16th day of March, 1934.

XXV.

That on the 21st day of February, 1934, H. A. Wallace, Secretary of Agriculture of the United States,

issued and caused to be served by registered mail upon the plaintiff Western Holstein Farms, Inc., a corporation, an order to show cause in case No. 17-1-5 why the said license of the said Western Holstein Farms, Inc., should not be suspended or revoked. That said order to show cause contained statements of alleged violations of the terms and conditions of License No. 17 charged against the said Western Holstein Farms, Inc., a copy of which statements is set forth in the findings of fact and order of the Secretary attached hereto, marked Exhibit "E" and hereinafter referred to.

That thereafter and on or about the 9th day of March, 1934, the said plaintiff, Western Holstein Farms, Inc., made and filed an answer to said order to show cause and the charges contained therein, and filed the same with the said Secretary of Agriculture.

That on or about the 6th day of March, 1934, said Secretary of Agriculture set the said matter for hearing in Los Angeles, California, on the 16th day of March, 1934.

XXVI.

That on the 21st day of February, 1934, H. A. Wallace, Secretary of Agriculture of the United States, issued and caused to be served by registered mail upon the plaintiff Valley Dairy Co., Inc., a corporation, an order to show cause in case No. 17-1-7 why the license of the said Valley Dairy Co., Inc., should not be suspended or revoked. That said order to show cause contained statements of alleged violations of the terms and conditions of License No. 17 charged against the said Valley Dairy Co., Inc., a copy of which statements is set forth in the findings of fact and order of the Secre-

tary attached hereto, marked Exhibit "F" and hereinafter referred to.

That thereafter and on or about the 9th day of March, 1934, the said plaintiff, Valley Dairy Co., Inc., made and filed an answer to said order to show cause and the charges contained therein, and filed the same with the said Secretary of Agriculture.

That on or about the 6th day of March, 1934, said Secretary of Agriculture set the said matter for hearing in Los Angeles, California, on the 16th day of March, 1934.

XXVII.

That on the 21st day of February, 1934, H. A. Wallace, Secretary of Agriculture of the United States, issued and caused to be served by registered mail upon the plaintiff, The Lucerne Cream and Butter Company, a corporation, an order to show cause in case No. 17-1-6, why the license of the said The Lucerne Cream and Butter Company should not be suspended or revoked. That said order to show cause contained statements of alleged violations of the terms and conditions of License No. 17 charged against the said The Lucerne Cream and Butter Company, a copy of which statements is set forth in the findings of fact and order of the Secretary attached hereto, marked Exhibit "G" and hereinafter referred to.

That thereafter and on or about the 9th day of March, 1934, the said plaintiff, The Lucerne Cream and Butter Company, made and filed an answer to said order to show cause and the charges contained therein, and filed the same with the said Secretary of Agriculture.

That on or about the 6th day of March, 1934, said Secretary of Agriculture set the said matter for hearing in Los Angeles, California, on the 16th day of March, 1934.

XXVIII.

That thereafter said Secretary of Agriculture appointed one Arthur P. Curran, an officer and employee of the United States Department of Agriculture, as hearing and presiding officer of such citations and orders to show cause, and appointed C. P. Dorr and A. P. Hadley, officers and employees of the said United States Department of Agriculture, to represent the said Secretary of Agriculture at said hearings.

XXIX.

That all of the four aforementioned hearings were consolidated. That plaintiffs specially and specifically objected to the jurisdiction of the presiding officer, said Arthur P. Curran, and of the Secretary of Agriculture, of and over the subject-matter of the charges and of and/or over the persons and businesses of said plaintiffs and each of them, and objected to the holding of said hearing or trial, and moved that said proceedings and said orders to show cause be dismissed upon the ground and for the reason that said presiding officer was not sitting as a court with jurisdiction to try the issues raised by said orders to show cause and the answers thereto, and particularly that all of the judicial power of the United States Government is vested in the Supreme Court of the United States and in such inferior courts as the Congress may from time to time ordain and establish, and that said hearing was a proceeding to

try plaintiffs herein before a tribunal established by the Secretary of Agriculture, and said tribunal had no jurisdiction to hear or try or determine the same.

Said plaintiffs and each of them further objected to said proceedings and moved to dismiss the same, and said orders to show cause, because said A. P. Curran was not a judge of an inferior court, ordained and established by Congress and holding office during good behavior, but was an appointee and representative of the Secretary of Agriculture only and was entirely without jurisdiction to hear or try or determine any issue presented by said orders to show cause or the answers thereto.

Said plaintiffs and each of them further objected to said proceeding and moved to dismiss the same and said orders to show cause upon the ground that neither the Constitution nor the National Agricultural Adjustment Act gives to the Secretary of Agriculture the power to delegate any authority vested in him to said A. P. Curran or to confer upon him any judicial power.

Said plaintiffs and each of them further objected to said proceedings and moved to dismiss the same and said orders to show cause because said proceedings was criminal in its nature and said plaintiffs and each of them were placed on trial without a presentment or indictment by a grand jury, contrary to the provision of Article V of the Amendments to the Constitution of the United States.

Said plaintiffs and each of them objected to said proceeding and moved to dismiss the same and said orders to show cause upon the ground that the terms and con-

ditions of said purported License No. 17 were fixed and provided by the Secretary of Agriculture; that the charges of violation thereof, as contained in said orders to show cause, were made by said Secretary of Agriculture and that said Secretary of Agriculture appeared in said proceeding as the prosecutor thereof; that therefore said Secretary of Agriculture, or any representative appointed by said Secretary of Agriculture, or any tribunal created by him, was without jurisdiction to hear or try or determine any of the issues presented by said orders to show cause and the answers thereto.

That said plaintiffs and each of them further objected to the jurisdiction of said tribunal and of said A. P. Curran to hear or try or determine any of the matters set forth in the orders to show cause, and severally moved that said proceeding and said orders to show cause be dismissed upon each of the grounds and for each of the reasons hereinafter stated in paragraph XLIX of this supplemental bill of complaint.

Said A. P. Curran overruled each and all of said objections and denied each and all of said motions, and held and ruled that all of the provisions of said National Agricultural Adjustment Act herein referred to were valid and constitutional, and that all of the provisions of said purported License No. 17 were valid, lawful and constitutional and within the authority of the Secretary of Agriculture to enact and impose, and that he as presiding officer had full power, authority and jurisdiction to preside at said hearing.

Said plaintiffs and each of them then objected to said proceeding and moved to dismiss the same and said

orders to show cause, because each of said plaintiffs had been denied the right to a trial by jury, granted by the provisions of Article VI and Article VII of the Amendments to the Constitution of the United States. Said A. P. Curran overruled said objections and denied said motions.

XXX.

That after the commencement of said hearing and prior to the introduction of any testimony thereat, the said plaintiffs, and each of them, through their respective counsel, raised certain objections to the jurisdiction of the Secretary of Agriculture to try the issues raised by said orders to show cause and the answers thereto, which objections to said jurisdiction were raised in said answers, and said objections were overruled by said presiding officer and motions to dismiss said proceedings, based on said lack of jurisdiction, were denied. Thereafter, and over the objections of the respondents, the plaintiffs herein, and their counsel, testimony was introduced by counsel for the said Secretary of Agriculture and the matter continued from time to time to and including the 18th day of June, 1934.

XXXI.

On the 31st day of May, 1934, the Secretary of Agriculture of the United States issued a document entitled "Termination of License for Milk—Los Angeles Milk Shed," wherein and whereby he did terminate, effective on and after 12:01 A. M. Eastern Standard Time, June 1, 1934, said License No. 17, dated November 16, 1933; that said Order of Termination of said License is in the words and figures following, to-wit:

“TERMINATION OF LICENSE FOR MILK— LOS ANGELES MILK SHED

“WHEREAS, the secretary acting under the provisions of the Agricultural Adjustment Act, for the purposes and within the limitations therein contained, and pursuant to the regulations issued thereunder, did, on the 16th day of November, 1933, execute under his hand and the official seal of the Department of Agriculture, a certain License entitled “License for Milk—Los Angeles Milk Shed,” (hereinafter referred to as the “License”), and

“WHEREAS, the Secretary has determined to terminate the aforesaid License,

“NOW, THEREFORE, the Secretary of Agriculture, acting under the authority vested in him as aforesaid:

“Hereby terminates the aforesaid License, but any and all obligations which have arisen, or which may hereafter arise in connection therewith, by virtue of or pursuant to such License, shall be deemed not to be affected, waived, or terminated hereby.

“IN WITNESS WHEREOF, R. G. TUGWELL, Acting Secretary of Agriculture of the United States, does hereby execute in duplicate and issue this order terminating the License for Milk—Los Angeles Milk Shed, in the City of Washington, District of Columbia, on this 31st day of May, 1934, to be effective on and after 12:01 A. M., Eastern Standard Time, June 1, 1934.”

“/S/ R. G. TUGWELL
“Acting Secretary”

XXXII.

Thereafter, and on said 31st day of May, 1934, the Secretary of Agriculture of the United States executed

and issued a document entitled "License No. 57, License for Milk, Los Angeles, California Sales Area" and purported to make the same affective on and after 12:01 A. M., Eastern Standard Time, June 1, 1934, and purported to take such action under and by virtue of the provisions of said National Agricultural Adjustment Act. A true copy of said document is hereto attached, marked "Exhibit C, and is hereby made a part hereof as fully as if set forth herein verbatim.

XXXIII.

All of the provisions and regulations of said purported License No. 57, dated May 31, 1934, purport to be applicable according to its terms only within the Los Angeles Sales Area as therein defined and only to distributors engaged in the business of distributing, marketing or handling milk or cream as a distributor in said Los Angeles Sales Area, and for ultimate consumption in said Los Angeles Sales Area, and does not apply to or in any manner regulate the business of distributing, marketing or handling milk or cream when the same enters into interstate or foreign commerce.

XXXIV.

Each of said plaintiffs herein was on the 31st day of May, 1934, and at all times thereafter, to and including July 28, 1934, engaged in the business of producing and/or distributing fluid milk within the said Los Angeles Sales Area, and the above provisions of said purported license apply, according to their terms, to each of the plaintiffs in the conduct of their said business.

XXXV.

Each of the plaintiffs herein at all times on and prior to July 28, 1934, purchased and/or produced all of the

milk used by it in the conduct of its business entirely and exclusively within the State of California, and also sold and distributed milk produced and/or purchased by it entirely within said State, and none of said milk was moved or shipped outside the State of California. None of the milk produced and/or purchased and/or sold and/or distributed by any one of the four plaintiffs herein was at any time or ever entered into the current of inter-state and/or foreign commerce, but at all times was and remained entirely within the current of purely intra-state commerce.

XXXVI.

(a) That as a part of the preamble of said purported License No. 57 (Exhibit "C"), the Secretary of Agriculture recites as follows:

"Whereas, the Secretary finds that the marketing of milk for distribution in the Los Angeles Sales Area and the distribution thereof are entirely in the current of interstate commerce because the said marketing and distribution are partly interstate and partly intra-state commerce and so inextricably intermingled that said interstate commerce portion cannot be effectively regulated or licensed without licensing that portion which is intra-state commerce."

(b) Said purported License No. 57, then provides, as follows:

"Now, Therefore, the Secretary of Agriculture, acting under the authority vested in him as aforesaid:

"Hereby licenses each and every distributor to engage in the business of distributing, marketing or handling

milk or cream as a distributor in the Los Angeles Sales Area, subject to the following terms and conditions.”

(c) Said purported License No. 57, defines “Los Angeles Sales Area,” as follows:

“Los Angeles Sales Area” means the territory within the corporate limits of the cities and towns of Los Angeles, Long Beach, Pasadena, South Pasadena, Glendale, Santa Ana, Fullerton, Anaheim, San Pedro, Santa Monica, San Bernardino, Riverside, Redlands, Pomona, Huntington Beach, Huntington Park, Whittier, Beverly Hills, Inglewood, Barstow; and the territory within the boundaries of Los Angeles County (including Santa Catalina Island), that part of San Bernardino County lying south of 35 degrees north latitude and west of 116 degrees west longitude, that part of Riverside County lying west of 116 degrees west longitude, and Orange County, all within the State of California.”

(d) Said purported License No. 57, provides, in paragraph 1, Section II, thereof, as follows:

“The schedule governing the prices at which, and the terms and conditions under which, distributors shall purchase and/or accept delivery of milk from producers, shall be that set forth in exhibit A. Any contract or agreement entered into between any distributor and producer, prior to the effective date of this License, covering the purchase and/or delivery of milk, shall be deemed to be superseded by the terms and provisions of this License in so far as such contract or agreement is inconsistent with any provision hereof.”

(e) Said purported License No. 57, provides in Paragraph 2, of Section II, thereof, as follows:

“Except as provided in exhibit A, no distributor shall purchase milk from producers except (a) those producers having bases, which are to be reported as provided in exhibit B, which is attached hereto and made a part hereof, and (b) new producers pursuant to the provisions of Exhibit A.

The schedule governing the minimum prices at which, and the terms and conditions under which, milk and cream shall be sold and/or delivered by distributors shall be that set forth in exhibit C, which is attached hereto and made a part hereof. Any contract or agreement entered into between any distributor and any person, prior to the effective date of this license, covering the sale and/or delivery of milk and/or cream, shall be deemed to be superseded by the terms and provisions of this License in so far as such contract or agreement is inconsistent with any provision hereof.”

(f) Said purported License No. 57, provides in Paragraph 3, of Section II, thereof, “that no distributor shall purchase milk from any producer unless such producer authorizes such distributor with respect to payment for milk purchased from such producer, to comply with the provisions of exhibit A, attached to said purported License and set forth herein as a part of “Exhibit C.”

(g) Said purported License No. 57, provides, in Paragraph 7, of Section II, thereof, as follows:

“Each distributor who is obligated to report pursuant to paragraph 4 of Section A, of exhibit A shall within thirty days after the effective date of the License, furnish to the Market Administrator a bond with good and

sufficient surety thereon, satisfactory to the Market Administrator (in an amount not in excess of the purchase value of the milk purchased by such distributor during any two successive delivery periods as designated by the Market Administrator) for the purpose of securing the fulfillment of such distributor's obligations as provided in exhibit A. Any distributor who commences to do business after the effective date of this License shall, as a condition precedent to engaging in such business, furnish to the Market Administrator a bond in conformity with the foregoing provision.

"The Market Administrator may, (2) if satisfied from the investigation of the financial conditions of a distributor that such distributor is solvent and/or possessed of sufficient assets to fulfill his said obligations, or (b), if, pursuant to a State statute, a distributor has furnished a bond with good and sufficient surety thereon in conformity with the foregoing provision, waive the requirements of the bond as to such distributor. Such distributor may, upon a change in such circumstances, be required by the Market Administrator to comply with the foregoing requirement.

"Each distributor who is unable to meet the requirements of the foregoing provisions, shall make periodic deposits, with the Market Administrator at such times, in such amounts, and in such manner as the Market Administrator may determine to be necessary in order to secure the fulfillment of such distributor's obligations as provided in exhibit A.

"Each and every distributor shall fulfill any and all of his obligations which shall have arisen or which may

hereafter arise in connection with, by virtue of, or pursuant to, the license for milk in the Los Angeles Sales Area issued by the Secretary on November 16, 1933.”

XXXVII

That each of the plaintiffs was on and prior to July 28, 1934, engaged in the business of distributing, marketing and handling milk and cream as a distributor in the Los Angeles Sales Area; that some of the plaintiffs produced within the territory of the State of California, defined by said purported license as “Los Angeles Sales Area,” a portion of the milk and cream distributed, marketed and handled by such plaintiff, and secured all other portions of the milk and cream which were distributed, marketed or handled by such plaintiffs from farmers whose farms are located wholly within the State of California and in the territory therein included within said Los Angeles Sales area; that no part of the milk or cream distributed, marketed or handled by any of the plaintiffs herein was sold or disposed of to persons residing outside the State of California, or to any person engaged in interstate commerce, so that such products were transported or disposed of outside the State of California; that as plaintiffs are informed and believe, and therefore allege the facts to be, no part of the milk or cream which is, or at any of the times mentioned in said purported licenses has been, distributed, marketed or handled in said Los Angeles Sales Area, is produced outside the State of California, but all thereof is, and at all said times has been, produced within the territory defined in said purported licenses as “Los Angeles Sales Area,” and/or within the territory in the State of Cali-

ifornia adjacent or in close proximity to said Los Angeles Sales Area, and that all of the milk and cream which is produced within the Los Angeles Sales Area is sold and disposed of within said territory defined by said license as "Los Angeles Sales Area," with the exception that at irregular times and intervals some distributors in said territory other than these plaintiffs sell and ship outside of the State of California small quantities of milk and cream after the same has been purchased within said territory and processed and prepared for shipment therein, and that the amount of milk and cream produced within said territory in the state of California which is thus transported outside the State of California is less than one-tenth of one per centum of the milk and cream produced therein and that the same is entirely separate and distinct from and in no way intermingled with the milk and cream distributed within said Los Angeles Sales Area and is not subject to the terms and conditions provided in said purported License No. 57.

XXXVIII.

That defendant H. C. Darger demanded of these plaintiffs and each of them that they file with him as Market Administrator, under said purported License No. 57, prior to June 5, 1934, and July 5, 1934, a statement as required by said purported License No. 57 and set forth in Exhibit "C" attached hereto and more particularly paragraph 4 of Exhibit "A" of said purported License No. 57 herein referred to.

XXXIX.

That said defendant H. C. Darger has demanded of these plaintiffs and each of them that they and each of

them deduct from the amount payable to each producer from whom each of these plaintiffs as a distributor purchased milk during the period commencing June 1, 1934, and ending June 30, 1934, both dates inclusive, and pay to said H. C. Darger as Market Administrator under said purported License No. 57 one-half cent per pound of butter fat contained in the milk purchased by each of said plaintiffs as a distributor, and in cases where one or more of the plaintiffs are distributors having production of their own, has demanded of said plaintiffs that they deduct a like amount per pound of butter fat contained in milk produced and sold, used or distributed by them during said period, and pay the same to said H. C. Darger as such Market Administrator. Said demands were purported to be made under and by virtue of the provisions of said purported License No. 57 hereinbefore referred to.

XL.

Said defendant, H. C. Darger, has demanded of these plaintiffs and each of them that they and each of them deduct from the amount payable to each producer from whom each of said plaintiffs as a distributor purchased milk during the period commencing June 1, 1934, and ending June 30, 1934, both dates inclusive, the amount of one cent per pound of butter fat contained in milk purchased from each of the producers who sold to said plaintiffs and who are not members of any association. Said demand was purported to be made under and by virtue of the terms and provisions of said purported License No. 57.

XLI.

That said defendant H. C. Darger as such Market Administrator has demanded of these plaintiffs and each of them that they and each of them deduct from the amount payable to each producer from whom each of said plaintiffs as a distributor purchased milk during the period commencing June 1, 1934, and ending June 30, 1934, both dates inclusive, and from the proceeds of the sale of milk produced by such plaintiffs having production of their own during such period, certain specific sums of money to the adjustment account of said H. C. Darger as Market Administrator, purported to be arrived at by said H. C. Darger as such Market Administrator under the terms and provisions of said purported License No. 57, and more particularly Exhibit "A" attached to said purported license, which said amounts were calculated by said H. C. Darger as such Market Administrator, the mode of such calculation or the correctness of said amounts being unknown to these plaintiffs, except that the said H. C. Darger notified each of these plaintiffs that the amount to be paid by them to producers of Class One milk, as defined in said purported License No. 57, should be forty-nine cents per pound of butter fat, instead of fifty-five cents per pound of butter fat as mentioned therein, and that the price to be paid to such producers for Class Two milk, as defined in said purported License No. 57, should be forty-four and $14/100$ cents per pound of butter fat, and that the price to be paid to producers for Class Three milk, as defined in said purported License No. 57, should be thirty-eight and $14/100$ cents per pound of butter fat, and the price to be paid to producers for Class Four milk,

as defined in said purported License No. 57, should be twenty-six and $\frac{46}{100}$ cents per pound of butter fat.

XLII.

That said defendant H. C. Darger as such Market Administrator will make similar demands on these plaintiffs each month hereafter for similar deductions from producers and for similar payments to him as such Market Administrator, and will do so under and by color of said purported License No. 57.

XLIII.

That said defendant H. C. Darger as such Market Administrator, and purporting to act under said purported License No. 57 hereinbefore referred to, has demanded from said plaintiffs and each of them that they and each of them furnish to him a bond or satisfactory financial statement, pursuant to the terms of Section VII of said purported License No. 57, and in addition thereto containing a statement under oath that the party making such statement has in all respects complied with and performed all obligations arising from the purported License No. 17.

XLIV.

That said License No. 57 and the demands made and to be made thereunder upon each of the plaintiffs by the defendants, and the threatened enforcement of said demands and of said purported License No. 57 by the defendants, as hereinbefore and hereinafter more particularly set out, have a common and similar effect upon each of these plaintiffs and their several businesses.

XLV.

That on the 18th day of June, 1934, in the continuation of said hearings, last referred to in paragraph

XXXI herein, counsel for the said Secretary of Agriculture offered in evidence the order of the Secretary terminating License No. 17 hereinbefore referred to, which was received by said presiding officer, and thereafter said counsel for said Secretary of Agriculture offered in evidence a certified copy of the new License No. 57, hereinbefore referred to as Exhibit "C" of this supplemental bill for injunction, which was received in evidence over the objection of counsel for the respondents therein, the plaintiffs herein, and after said order admitting such License No. 57 into evidence in such hearings, the said counsel for the said Secretary of Agriculture moved to amend the order to show cause theretofore issued against each of the plaintiffs herein on the 21st day of January, 1934, as hereinbefore set forth, which said amendments charged, or attempted to charge, each of the plaintiffs herein with the violation of said License No. 57, and to cite and order each of the plaintiffs herein to show cause why its said license under said License No. 57 should not be suspended or revoked, by reason of each of said respondents' failure to comply with the provisions of said License No. 57 relating to their compliance of the provisions of said License No. 17. That plaintiffs herein and respondents therein, through their counsel, each severally objected to such amendment upon the grounds that the same was not an amendment, but was the issuance of a new citation and did not comply with the rules promulgated by the said Secretary of Agriculture relating to the revocation or suspension of licenses, which said rules are set forth herein in paragraph VI of this supplemental complaint. That despite said objection the said presiding officer permitted the filing of said citations or amend-

ments to the orders to show cause as hereinbefore set forth and thereupon plaintiffs herein, not being personally present or receiving service of such citation or amendments to such orders to show cause, were not, therefore, represented in person or by counsel authorized to represent them on such citations or orders to show cause; and that plaintiffs herein have not at any time received or been served, pursuant to said regulations set forth in paragraph VI of this supplemental complaint, with copies of such citations or amended orders to show cause under said License No. 57, as to why their licenses under the purported License No. 57 should be revoked or suspended.

XLVI.

That on or about the 28th day of July, 1934, as plaintiffs are informed and believe and upon such information and belief allege, the said H. A. Wallace, as such Secretary of Agriculture, made and filed in the office of the chief hearing clerk of the United States Department of Agricultural Adjustment Administration his findings of fact and order in each of said hearings, a copy of each of which, certified to by Joseph G. Walsh, deputy hearing clerk of said United States Department of Agriculture, is hereto attached, marked Exhibits "D," "E," "F" and "G" respectively and made a part hereof as though the same were fully set forth herein, and to said exhibits and each of which reference is hereby made.

That by the terms of said purported orders of H. A. Wallace, Secretary of Agriculture, herein last referred to, the licenses of each of the plaintiffs herein under said License No. 57 and the right of each of the plaintiffs herein to engage in the business of distributing fluid

milk within the said Los Angeles sales area is and was thereby attempted to be revoked, effective on and after 6 P. M. Pacific Standard Time, on the 28th day of July, 1934.

XLVII.

That each of said plaintiffs herein has for many years last past conducted, and was on the said 28th day of July, 1934, conducting and carrying on and engaging in the business of producing and/or distributing milk and cream within that part of the State of California designated in said purported License No. 57 (Exhibit "C" herein) as "Los Angeles Sales Area," and each maintained a plant containing machinery and other apparatus to handle and process milk and cream in accordance with sanitary requirements as prescribed by the laws of the State of California and by ordinances of the several cities within which said plants are located.

That each of said plaintiffs in each of said businesses as aforesaid has created good will of inestimable value; that the customers of each of said plaintiffs all reside in the State of California and none of said plaintiffs does any business with persons residing or doing business in places outside of the State of California.

That the persons from whom said plaintiffs purchased milk and cream, and the persons to whom said plaintiffs sold milk and cream, are satisfied with and desire to continue such business; that each of the plaintiffs desires to continue to engage in the business of distributing milk and cream in said Los Angeles Sales Area, but if the order of the said H. A. Wallace, Secretary of Agriculture, dated July 28, revoking the license and right of plaintiffs, and each of them, to conduct their several

businesses is enforced, said plaintiffs will thereby lose the good will and going value of their several businesses.

That under the provisions of said National Agricultural Adjustment Act the doing of business without a license, where a license is required, is punishable by a penalty of not exceeding one thousand dollars per day; that said penalty is so unusual, oppressive and unreasonable that said plaintiffs are thereby precluded from the privilege of asserting their rights independently and challenging in court by defensive tactics the validity of said purported Licenses Nos. 17 and 57 and the provisions of said National Agricultural Adjustment Act, pursuant to which said licenses purport to have been issued, without incurring the risk of being visited with such oppressive and unreasonable penalties that plaintiffs have no speedy and/or adequate remedy at law and the injury to plaintiffs' right will be irreparable unless this court shall exercise its equitable jurisdiction to issue an injunction. Moreover, interference by said defendants with plaintiffs' businesses, unless restrained by order of this Court, will be continuous to the great and irreparable injury of plaintiffs and each of them. Said penalties imposed by said Act, which are contended and believed by plaintiffs to be not legal, are so excessive as to intimidate plaintiffs by the risk of having to pay the amounts thereof, and since the ordinary method of testing the validity of said Act and the purported Licenses Nos. 17 and 57 purportedly issued thereunder would subject the plaintiffs to the risk of said enormous penalties, if in error, and that consequently said purported licenses and Act deprive plaintiffs of their property without due process of law, contrary to the Fifth Amendment to the

Constitution of the United States, and plaintiffs are without remedy except in this court of equity.

XLVIII.

That said defendant Milk Producers Inc., did, on or about the 17th day of July, 1934, commence an action in the Superior Court of the State of California, in and for the County of Los Angeles, entitled "Milk Producers, Inc., plaintiff, vs. Lucerne Cream and Butter Company, et al., defendants," being No. 376176 in the files and records of said court, to collect and recover judgment for the amounts claimed to be due said Milk Producers, Inc., by said Lucerne Cream and Butter Company under the terms and provisions of said purported License No. 17, as arbitrarily and illegally fixed by the defendant Los Angeles Milk Industry Board as surplus deductions to be made by said Lucerne Cream and Butter Company from its producers for the periods from November 20, 1933, to May 31, 1934, both dates inclusive, as more particularly hereinbefore set forth in paragraphs X, XIII, XVI, XIX and XXII of this supplemental bill for injunction, and in the amounts as purportedly last fixed by the said Los Angeles Milk Industry Board as aforesaid, and threatens to and will institute similar actions against each of the other plaintiffs herein to collect like amounts as set forth in said paragraphs X, XIII, XVI, XIX and XXII aforesaid, and threatens to and will prosecute such suits to judgment unless restrained from so doing by order of this court.

XLIX.

Plaintiffs respectfully show to the Court that said purported License No. 17, and said purported License No.

57, and said National Agricultural Act insofar as it purports to authorize said purported Licenses, are, and each of them is, and at all times have been void under the Constitution and Laws of the United States for the following reasons and in the following respects:

(a) Because said National Agricultural Adjustment Act is not a regulation of interstate commerce.

(b) Because said purported License No. 17 recited and found contrary to fact that the marketing of milk in said territory designated therein as the "Los Angeles Sales Area" is in the current of interstate commerce and inextricably intermingled with it.

(c) Because said purported License No. 57 recites and finds contrary to fact that the marketing of milk for distribution in the Los Angeles Sales Area and the distribution thereof are entirely in the current of interstate commerce, because the said marketing and distribution are partly interstate and partly intra-state commerce and so inextricably intermingled that said interstate commerce portion can not be effectively regulated or licensed without licensing that portion which is intra-state commerce.

(d) Because said purported License No. 17 was an attempt to regulate the business of production and sale of fluid milk within a portion of the State of California and did not in any way constitute a regulation of interstate commerce.

(e) Because said purported License No. 57 is an attempt to regulate the business of distributing, marketing and handling milk and cream in the Los Angeles Sales Area only and entirely within the State of Cali-

fornia and does not in any way constitute a regulation of interstate commerce.

(f) Because said purported License No. 17 was an attempt to regulate purely intra-state business by Federal authorities under the guise of regulating interstate and foreign commerce.

(g) Because said purported License No. 57 is an attempt to regulate purely intra-state business by Federal authorities under the guise of regulating interstate and foreign commerce.

(h) Because said License No. 57 does not contain any regulation of interstate or foreign commerce or license distributors, or any distributor, to engage in the handling of milk or cream in the current of interstate or foreign commerce, and said license No. 17 did not contain any regulation of interstate or foreign commerce.

(i) Because said National Agricultural Adjustment Act has no application to the plaintiffs herein, or any of them, or to other persons similarly situated in the State of California.

(j) Because said National Agricultural Adjustment Act insofar as it attempts to confer upon the Secretary of Agriculture the power to issue licenses and to thereby fix such terms and conditions as may be necessary to eliminate unfair practices or charges that prevent or tend to prevent the effectuation of the declared policy and the restoration of normal economic conditions in the marketing of such commodities or products thereof and the financing thereof is an unlawful and unconstitutional delegation of legislative authority to an executive officer and violates Article I, of the Constitution of the United States.

(k) Because said National Agricultural Adjustment Act insofar as it attempts to confer upon the Secretary of Agriculture the power to hear, try and determine as to violations of the terms and conditions of such license and to suspend or revoke such license for the violation of the terms and conditions thereof is an unlawful and unconstitutional delegation of judicial power to an executive officer and violates Article III of the Constitution of the United States.

(l) Because said License No. 17 as issued by said Secretary of Agriculture was not authorized by said National Agricultural Adjustment Act.

(m) Because said License No. 57 as issued by said Secretary of Agriculture is not authorized by said National Agricultural Adjustment Act.

(n) Because the issuance of said License No. 17 constituted an unlawful assumption and usurpation of legislative power by the Secretary of Agriculture.

(o) Because the issuance of said License No. 57 constitutes an unlawful assumption and usurpation of legislative power by the Secretary of Agriculture.

(p) Because said License No. 17 constituted an unlawful and unwarranted interference with the right of these plaintiffs, and each of them, to contract with producers.

(q) Because said License No. 57 constitutes an unlawful and unwarranted interference with the rights of these plaintiffs to contract with the producers.

(r) Because said purported License No. 17 was an attempt to impose a charge upon one individual for the benefit of other private individuals, corporations or enterprises.

(s) Because said purported License No. 57 is an attempt to impose a charge upon one individual for the benefit of other private individuals, corporations or enterprises.

(t) Because said purported License No. 17 attempted to fix and levy an arbitrary charge to be paid to a private corporation in which plaintiffs are not members or stockholders without any legislative authority and contrary to the provisions of Section VIII of Article I of the Constitution of the United States.

(u) Because said purported License No. 57 attempts to fix and levy an arbitrary charge to be paid to the Market Administrator without any legislative authority and contrary to the provisions of Section VIII of Article I of the Constitution of the United States.

(v) Because said purported License No. 17 was an attempt by Federal authorities to fix commodity prices to producers, distributors and consumers in the course of conducting a business which is not burdened with a public interest or duty and which is not subject to price regulation by Federal authorities or otherwise.

(w) Because said purported License No. 57 is an attempt by Federal authorities to fix commodity prices to producers, distributors and consumers in the course of conducting a business which is not burdened with a public interest or duty and which is not subject to price regulation by Federal authorities or otherwise.

(x) Because said purported License No. 17 was an attempt to deprive these plaintiffs of their property without due process of law in violation of plaintiffs rights and particularly of the Fifth Amendment of the Constitution of the United States.

(y) Because said purported License No. 57 deprives these plaintiffs of their property without due process of law in violation of plaintiffs rights and particularly of the Fifth Amendment of the Constitution of the United States.

(z) Because said purported License No. 57 insofar as it attempts to provide as one of the terms and conditions thereof that each and every distributor shall fulfill any and all of his obligations which shall have arisen, or which may hereafter arise in connection with, by virtue of, or pursuant to said License No. 17 is retroactive and is an attempt to enact an ex post facto law contrary to the provisions of Section 9, of Article I, of the Constitution of the United States.

L.

Plaintiffs allege that the Act of Congress above referred to, the rules and regulations promulgated by the Secretary of Agriculture and approved by the President and said licenses issued by the Secretary of Agriculture do not apply to said plaintiffs, or either of them, or to their said business, and that if said Act is held to embrace the business of these plaintiffs, then Congress has exercised the power of legislation over a subject and matter over which it has no rightful power under the Constitution of the United States; plaintiffs believe that the rules and regulations and said licenses promulgated by the Secretary of Agriculture contravene the terms of the Act of Congress above referred to and are not applicable to these plaintiffs, or either of them, yet, nevertheless, the defendants to this supplemental bill of complaint are attempting to enforce the same against plaintiffs, and each of them, and intend to deprive the individual plain-

tiff and the stockholders of the plaintiff corporations, and each of them, of the opportunity to support themselves and their families and intend to prevent plaintiffs and each of them from making an income from the businesses built up prior to the passing of said Act of Congress, and that the cancellation and the revocation of the licenses of plaintiffs, if enforced, will cause the assets of plaintiffs and each of them to be deteriorated, and the good will created by plaintiffs to be destroyed, and thereby plaintiffs and each of them will be irreparably injured, and against such wrongful acts of said defendants and each of them, the plaintiffs and each of them can only be relieved by a decree of this Court adjudging that the National Agricultural Adjustment Act and/or said Licenses Nos. 17 and 57 are either void or inapplicable to plaintiffs and each of them. That the damages that plaintiffs, and each of them have suffered and will suffer as a result of being deprived of a license to conduct a business are of a speculative and uncertain character, incapable of being assessed by a jury upon a trial of an action at law wherein the constitutionality of the Act of Congress, the propriety of said rules and regulations and the limits and validity of the licenses may be tried, and therefore plaintiffs, and each of them, charge that they are entitled to be relieved by a decree of this Court declaring their rights, which decree should be enforced by a writ of injunction directed to the defendants and each of them and enjoin and restrain them and each of them from the commission of the wrongful acts herein complained of.

Plaintiffs and each of them believe, and therefore allege, that at said hearing conducted before the officers

and employees of said Secretary of Agriculture as aforesaid, no one of said plaintiffs received a fair and/or impartial trial or hearing.

LI.

That plaintiffs and each of them are informed and believe, and therefore allege on such information and belief, that defendant Pierson M. Hall, as United States District Attorney for the Southern District of California, intends to and will institute proceedings against said plaintiffs and each of them to enforce the order of said H. A. Wallace, as Secretary of Agriculture, revoking said License No. 57 as to said plaintiffs and each of them and to prevent said plaintiffs and each of them from continuing in business as hereinbefore set forth, and to enforce the penalties prescribed by said National Agricultural Adjustment Act against the plaintiffs and each of them for continuing the operation of their respective businesses after the revocation of License No. 57 as to each of them, as hereinbefore set forth.

LII.

Plaintiffs respectfully show the Court that the acts and threatened acts of the defendants above set forth are in violation of the Constitution and laws of the United States and the rights of plaintiffs thereunder in the respects and for the reasons set forth in paragraphs XXX and XLIX, *supra*.

LIII.

Plaintiffs further show that even if the Court should hold that said purported license and Act were valid, so far as the regulation of the marketing of milk in interstate commerce is concerned, nevertheless both said purported license and Act, and the acts and threatened acts

of defendants herein set forth, are invalid as to these plaintiffs, for the reason that they are not engaged in the marketing of milk for distribution in interstate commerce, as is above more particularly set forth.

WHEREFORE, plaintiffs pray that, in view of the irreparable injury which is being and is about to be inflicted upon plaintiffs and each of them, and the multiplicity of penalty suits to which plaintiffs and each of them will be subjected but for the restraining process of this Court, a restraining order at once issue, restraining and enjoining the defendants and each of them, their agents, attorneys, successors and employees, from making any of the demands and committing any of the acts with relation to these plaintiffs, or any of them, above mentioned; and restraining and enjoining each of the defendants, their agents, attorneys, successors and employees, from in any manner interfering with plaintiffs, or any of them, in the conduct of their respective businesses, by any form of civil or criminal proceeding, or otherwise, and from enforcing or attempting to enforce as against the said plaintiffs, or any of them, any of the terms and provisions of said Licenses Nos. 17 and 57, and from collecting or attempting to collect from plaintiffs, or any of them, any of the sums of money demanded under the terms and provisions of said Licenses Nos. 17 and 57, as hereinbefore set forth, either by civil or criminal proceedings, or otherwise, or from commencing, prosecuting or maintaining any action against any of the plaintiffs for the collection of any of said sums, or from taking any action against the said plaintiffs, or any of them, by any form of civil or criminal proceedings or otherwise to enforce any penalty or penalties prescribed in the Na-

tional Agricultural Adjustment Act, or in any rules or regulations purported to be issued thereunder by the Secretary of Agriculture; that said restraining order contain such instructions or further orders as to the Court shall seem fit and proper.

That defendants and each of them be ordered to show cause why a temporary injunction of like character should not issue and that upon the hearing of said order to show cause a temporary injunction of like character issue, and that upon the final hearing said temporary injunction be made permanent.

Plaintiffs further pray that this court adjudge and decree:

(a) That the Act of Congress known as the National Agricultural Adjustment Act is unconstitutional and void, or is not applicable to these plaintiffs or their said businesses;

(b) That the rules and regulations described in this supplemental bill of complaint, as promulgated by the Secretary of Agriculture, are null and void, or are inoperative and inapplicable as to the plaintiffs herein;

(c) That the Licenses Nos. 17 and 57, and each of them, as promulgated by the Secretary of Agriculture, were and are void, invalid and ultra vires, or that said licenses and each of them were and are inoperative and inapplicable to the plaintiffs herein;

(d) That plaintiffs are entitled to the general relief sought herein and that such other writs do issue herein as to the Court shall seem fit and proper and necessary for the protection of plaintiffs; and

(e) That plaintiffs have their costs incurred herein and any and all such other, further and different relief as in equity they may be entitled to.

LEWIS D. COLLINGS

Lewis D. Collings

EDWARD M. SELBY

Edward M. Selby

WALTER F. HASS

Walter F. Haas

HAROLD C. JOHNSTON

Harold C. Johnston

Attorneys for Plaintiffs.

STATE OF CALIFORNIA,
County of Los Angeles—ss.

CHARLES J. KURTZ, being first duly sworn, deposes and says: That he is one of the plaintiffs in the above entitled action; that he has read the foregoing supplemental bill for injunction and knows the contents thereof, and that the same is true, of his own knowledge, except as to the matters therein stated on information or belief, and as to such matters that he believes it to be true.

CHARLES J. KURTZ

Charles J. Kurtz

Subscribed and sworn to before me this 8th day of August, 1934,

(SEAL)

CELIA BOLSON

Celia Bolson

Notary Public in and for the County of
Los Angeles, State of California.

STATE OF CALIFORNIA,
County of Los Angeles—ss.

GEO. O. STODDARD, being first duly sworn, deposes and says: that he is the Secretary of Western Holstein Farms, Inc., a corporation one of the plaintiffs herein, and that he therefore verifies the foregoing supplemental bill for injunction on behalf of said corporation, plaintiff; that he has read the said supplemental bill for injunction and knows the contents thereof and that the same is true of his own knowledge, except as to the matters therein stated on information or belief, and as to such matters that he believes it to be true.

GEO. O. STODDARD
Geo. O. Stoddard

Subscribed and Sworn to before me this 8th day of
August, 1934,

(SEAL)

CELIA BOLSON
Celia Bolson

Notary Public in and for the County of
Los Angeles, State of California.

STATE OF CALIFORNIA,
County of Los Angeles—ss.

B. FRATKIN, being first duly sworn, deposes and says: That he is the President of the Valley Dairy Co., Inc., a corporation, one of the plaintiffs herein, and that he therefore verifies the foregoing supplemental bill for injunction on behalf of said corporation, plaintiff; that he has read the said supplemental bill for injunction and knows the contents thereof and that the same is true of his own knowledge, except as to the matters therein

stated on information or belief, and as to such matters that he believes it to be true.

B. FRATKIN

B. Fratkin

Subscribed and sworn to before me this 8th day of August, 1934,

(SEAL)

CELIA BOLSON

Celia Bolson

Notary Public in and for the County of Los Angeles, State of California.

STATE OF CALIFORNIA,
County of Los Angeles—ss.

EDWARD M. SELBY, being first duly sworn, deposes and says: That he is now, and was at all times in the foregoing supplemental bill for injunction mentioned, one of the attorneys of record for the plaintiff, The Lucerne Cream and Butter Company, a corporation, and that he verifies the foregoing supplemental bill for injunction on behalf of said corporation, plaintiff, by reason of the fact that there is no officer of said corporation plaintiff at the present time within the Southern District of California; that he has read the said supplemental bill for injunction and knows the contents thereof and that the same is true of his own knowledge, except as to the matters therein stated on information or belief, and as to such matters that he believes it to be true.

EDWARD M. SELBY

Edward M. Selby

Subscribed and sworn to before me this 8th day of
August, 1934,

(SEAL)

CELIA BOLSON

Celia Bolson

Notary Public in and for the County of
Los Angeles, State of California.

(NOTE—Exhibits “A” and “B” appearing herein are
set forth supra in Bill of Complaint.)

Docket No. 161

EXHIBIT C

UNITED STATES DEPARTMENT OF AGRICULTURE
AGRICULTURAL ADJUSTMENT ADMINISTRATION

LICENSE SERIES—LICENSE No. 57

LICENSE FOR MILK

LOS ANGELES, CALIFORNIA, SALES AREA

WITH THE FOLLOWING EXHIBITS

Exhibit A

Marketing Plan

Exhibit B

Rules for Establishment of Bases

Exhibit C

Schedule of Unfair Trade Practices and Minimum
Resale Prices

SUPERSEDES LICENSE NO. 17

of November 20, 1933.

Issued by the Acting Secretary of Agriculture,
May 31, 1934.

Effective date June 1, 1934 (12:01 a.m., eastern
standard time).

LICENSE FOR MILK
LOS ANGELES, CALIFORNIA, SALES AREA
LICENSE SERIES—LICENSE No. 57

Whereas, it is provided by section 8 of the Act as follows:

“Section 8. In order to effectuate the declared policy, the Secretary of Agriculture shall have power—

“(3) To issue licenses permitting processors, associations of producers and others to engage in the handling, in the current of interstate or foreign commerce, of any agricultural commodity or product thereof, or any competing commodity or product thereof. Such licenses shall be subject to such terms and conditions, not in conflict with existing Acts of Congress or regulations pursuant thereto, as may be necessary to eliminate unfair practices or charges that prevent or tend to prevent the effectuation of the declared policy and the restoration of normal economic conditions in the marketing of such commodities or products and the financing thereof. * * *

“(4) To require any licensee under this section to furnish such reports as to quantities of agricultural commodities or products thereof bought and sold and the prices thereof, and as to trade practices and charges, and to keep such systems of accounts, as may be necessary for the purpose of part 2 of this title”; and

Whereas, the Secretary has determined to issue licenses as hereinafter provided, pursuant to section 8 (3) of said Act; and

Whereas, the Secretary finds that the marketing of milk for distribution in the Los Angeles Sales Area and the distribution thereof are entirely in the current of

interstate commerce because the said marketing and distribution are partly interstate and partly intrastate commerce and so inextricably intermingled that said interstate commerce portion cannot be effectively regulated or licensed without licensing that portion which is intrastate commerce;

Now, therefore, the Secretary of Agriculture, acting under the authority vested in him as aforesaid;

Hereby licenses each and every distributor to engage in the business of distributing, marketing or handling milk or cream as a distributor in the Los Angeles Sales Area, subject to the following terms and conditions:

I.

As used in this License, the following words and phrases shall be defined as follows:

A. "Producer" means any person, irrespective of whether any such person is also a distributor, who produces milk in conformity to the applicable health requirements of the Los Angeles Sales Area for milk to be sold for consumption as whole milk in the Los Angeles Sales Area.

B. "Distributor" means any of the following persons, irrespective of whether any such person is a producer or an association of producers, wherever located or operating, whether within or without the Los Angeles Sales Area, engaged in the business of distributing, marketing, or in any manner handling, in whole or in part, whole milk or cream for ultimate consumption in the Los Angeles Sales Area.

1. Persons

(a) who pasteurize, bottle or process milk or cream;

- (b) who distribute milk or cream at wholesale or retail (1) to hotels, restaurants, stores or other establishments for consumption on the premises, (2) to stores or other establishments for resale, or (3) to consumers;
- (c) who operate stores or other establishments selling milk or cream at retail for consumption off the premises.

2. Persons who purchase, market or handle milk or cream for resale in Los Angeles Sales Area.

C. "Los Angeles Sales Area" means the territory within the corporate limits of the cities and towns of Los Angeles, Long Beach, Pasadena, South Pasadena, Glendale, Santa Ana, Fullerton, Anaheim, San Pedro, Santa Monica, San Bernardino, Riverside, Redlands, Pomona, Huntington Beach, Huntington Park, Whittier, Beverly Hills, Inglewood, Barstow; and the territory within the boundaries of Los Angeles County (including Santa Catalina Island), that part of San Bernardino County lying south of 35 degrees north latitude and west of 116 degrees west longitude, that part of Riverside County lying west of 116 degrees west longitude, and Orange County, all within the State of California.

D. "Secretary" means the Secretary of Agriculture of the United States.

E. "Act" means the Agricultural Adjustment Act approved May 12, 1933, as amended.

F. "Person" means individual, partnership, corporation, association or any other business unit.

G. "Subsidiary" means any person of, or over whom or which, a distributor or an affiliate of a distributor

has, or several distributors collectively have, either directly or indirectly, actual or legal control, whether by stock ownership or in any other manner.

H. "Affiliate" means any person and/or any subsidiary thereof, who or which has, either directly or indirectly, actual or legal control of or over a distributor, whether by stock ownership or in any other manner.

I. "Books and records" means books, records, accounts, contracts, memoranda, documents, papers, correspondence or other data pertaining to the business of the person in question.

J. "Market Administrator" means the person designated pursuant to exhibit A, which is attached hereto and made a part hereof.

II.

1. The schedule governing the prices at which, and the terms and conditions under which, distributors shall purchase and/or accept delivery of milk from producers, shall be that set forth in exhibit A. Any contract or agreement entered into between any distributor and producer, prior to the effective date of this License, covering the purchase and/or delivery of milk, shall be deemed to be superseded by the terms and provisions of this License in so far as such contract or agreement is inconsistent with any provision hereof.

2. Except as provided in exhibit A, no distributor shall purchase milk from producers except (a) those producers having bases, which are to be reported as provided in exhibit B, which is attached hereto and made a part hereof, and (b) new producers pursuant to the provisions of exhibit A.

The schedule governing the minimum prices at which, and the terms and conditions under which, milk and cream shall be sold and/or delivered by distributors shall be that set forth in exhibit C, which is attached hereto and made a part hereof. Any contract or agreement entered into between any distributor and any person, prior to the effective date of this License, covering the sale and/or delivery of milk and/or cream, shall be deemed to be superseded by the terms and provisions of this License in so far as such contract or agreement is inconsistent with any provision hereof.

3. No distributor shall purchase milk from any producer unless such producer authorizes such distributor, with respect to payments for milk purchased from such producer, to comply with the provisions of exhibit A.

4. (a) The distributors shall severally, from time to time, upon the request of the Secretary, furnish him with such information as he may request, on and in accordance with forms of reports to be supplied by him, for the purposes of (1) assisting the Secretary in the furtherance of his powers and duties with respect to this License and/or (2) enabling the Secretary to ascertain and determine the extent to which the declared policy of the Act and the purpose of this License are being effectuated; such reports to be verified under oath. The Secretary's determination as to the necessity of and the justification for the making of any such reports, and the information called for thereby, shall be final and conclusive.

(b) For the same purposes and/or to enable the Secretary to verify the information furnished him on said

forms of reports, all the books and records of each distributor and the books and records of the affiliates and subsidiaries of each distributor, shall, during the usual hours of business, be subject to the examination of the Secretary. The Secretary's determination as to the necessity of and the justification for any such examination shall be final and conclusive.

(c) The distributors and their respective affiliates and subsidiaries shall severally keep books and records which will clearly reflect all the financial transactions of their respective businesses and the financial condition thereof.

(d) All information furnished the Secretary, pursuant to this paragraph, shall remain confidential in accordance with the applicable General Regulations, Agricultural Adjustment Administration.

5. No distributor shall purchase milk or cream from, or process or distribute milk or cream for, or sell milk or cream to, any other distributor who he has notice is violating any provisions of this License, without first reporting such violation to the Market Administrator.

6. The Secretary may, by designation in writing, name any person, including any officer or employee of the Government, to act as his representative in connection with any of the powers provided in this License to be exercised by the Secretary.

7. Each distributor who is obligated to report pursuant to paragraph 4 of section A, of exhibit A shall within thirty days after the effective date of the License, furnish to the Market Administrator a bond with good and sufficient surety thereon, satisfactory to the Market

Administrator (in an amount not in excess of the purchase value of the milk purchased by such distributor during any two successive delivery periods as designated by the Market Administrator) for the purpose of securing the fulfillment of such distributor's obligations as provided in exhibit A. Any distributor who commences to do business after the effective date of this License shall, as a condition precedent to engaging in such business, furnish to the Market Administrator a bond in conformity with the foregoing provision.

The Market Administrator may, (a) if satisfied from the investigation of the financial conditions of a distributor that such distributor is solvent and/or possessed of sufficient assets to fulfill his said obligations, or (b) if, pursuant to a State statute, a distributor has furnished a bond with good and sufficient surety thereon in conformity with the foregoing provision, waive the requirements of the bond as to such distributor. Such distributor may, upon a change in such circumstances, be required by the Market Administrator to comply with the foregoing requirement.

Each distributor who is unable to meet the requirements of the foregoing provisions, shall make periodic deposits, with the Market Administrator at such times, in such amounts, and in such manner as the Market Administrator may determine to be necessary in order to secure the fulfillment of such distributor's obligations as provided in exhibit A.

Each and every distributor shall fulfill any and all of his obligations which shall have arisen or which may hereafter arise in connection with, by virtue of, or pur-

suant to, the License for Milk in the Los Angeles Sales Area issued by the Secretary on November 16, 1933.

8. If any provision in this License is declared invalid, or the applicability thereof to any person, circumstance, or thing is held invalid, the validity of such provision and of the remainder of this License and/or the applicability thereof to any other person, circumstance or thing shall not be affected thereby.

9. Nothing herein contained shall be construed in derogation of the right of the Secretary to exercise any powers granted him by the Act, and in accordance with such powers, to act in the premises whenever he shall deem it advisable.

10. This License shall take effect as to every distributor at the time and upon the date set forth herein above the signature of the Secretary.

11. In the event this License is terminated or amended by the Secretary, any and all obligations which shall have arisen, or which may thereafter arise in connection therewith, by virtue of or pursuant to this License, and any violation of this License which may have occurred prior to such termination or amendment, shall be deemed not to be affected, waived or terminated by reason thereof, unless so expressly provided in the notice of termination of, or the amendment to this License.

The Secretary hereby determines that an emergency exists which requires a shorter period of notice than three days, and that the period of notice with respect to the issuance of this License which is hereinafter provided is reasonable under the circumstances.

IN WITNESS WHEREOF, I, R. G. Tugwell, Acting Secretary of Agriculture, do hereby execute in duplicate

and issue this License in the city of Washington, District of Columbia, on this 31st day of May, 1934, and pursuant to the provisions hereof, declare this License to be effective on and after 12:01 a. m., eastern standard time, June 1, 1934.

R. G. TUGWELL,
Acting Secretary of Agriculture.

EXHIBIT A

Marketing Plan

SECTION A. COST OF MILK TO DISTRIBUTORS.

1. Each distributor, except as hereinafter provided, shall be obligated to pay, in the manner hereinafter provided, the following prices per pound of butterfat contained in milk which he has purchased from producers, (including new producers as defined in section C of this exhibit) delivered f.o.b. distributors' plants in the Los Angeles Sales Area:

Class I - 55 cents.

Class II - The average price per pound of 92 score butter at wholesale in the Los Angeles Market as reported by the United States Department of Agriculture for the delivery period during which such milk is purchased, plus 40 per cent of such amount, plus 12 cents.

Class III - The average price per pound of 92 score butter at wholesale in the Los Angeles Market as reported by the United States Department of Agriculture the delivery period during which

such milk is purchased, plus 40 per cent of such amount, plus 6 cents.

Class IV – The average price per pound of 92 score butter at wholesale in the Los Angeles Market as reported by the United States Department of Agriculture for the delivery period during which such milk is purchased, plus or minus, as the case may be, $\frac{1}{4}$ cents for each one cent that such price is above or below 25 cents, plus 4 cents.

The term “delivery period” shall mean the period from the first to, and including, the last day of each month.

2. Class I milk means all milk sold or distributed by distributors as whole milk for consumption in the Los Angeles Sales Area.

Class II milk means all milk used by distributors to produce cream for sale or distribution by distributors as cream for consumption in the Los Angeles Sales Area.

Class III milk means all milk sold or used by distributors to produce ice cream and/or ice cream mix, for consumption in the Los Angeles Sales Area.

Class IV milk means the quantity of milk purchased, sold, used or distributed by distributors in excess of Class I, Class II and Class III milk.

Milk delivered to a distributors by producers during any delivery period and sold or distributed as milk or cream outside the Los Angeles Sales Area or sold by such distributor to another distributor (including any person who sells, uses or distributes such milk or cream

for ultimate consumption in any market with respect to which no License is in effect pursuant to section 8 (3) of the Act covering such purchase from producers and such sale as milk or cream) shall be accounted for by the first distributor as Class I or Class II milk, respectively, unless such first distributor on or before the date fixed for filing reports with the Market Administrator for such delivery period shall furnish to the Market Administrator proof satisfactory to the Market Administrator that such milk or cream has been utilized for a purpose other than sale, use or distribution for ultimate consumption as milk or cream, in which event such milk or cream shall be classified in accordance with such other use.

Any distributor purchasing milk and/or cream from another distributor shall, on or before the date fixed for filing reports with the Market Administrator, pursuant to paragraph 4 hereof, furnish to the distributor from whom he purchased such milk and/or cream, an affidavit as to the quantity of milk and/or cream sold, used or distributed in each of the classifications herein defined.

Any distributor, who does not sell or distribute whole milk for ultimate consumption in the Los Angeles Sales Area, may purchase milk from producers who do not have established bases. Such distributor

- (a) shall not sell cream to other distributors for distribution and ultimate consumption in the Los Angeles Sales Area at a price less than the price at which such distributor sells similar cream for distribution and ultimate consumption

such milk is purchased, plus 40 per cent of such amount, plus 6 cents.

Class IV – The average price per pound of 92 score butter at wholesale in the Los Angeles Market as reported by the United States Department of Agriculture for the delivery period during which such milk is purchased, plus or minus, as the case may be, $\frac{1}{4}$ cents for each one cent that such price is above or below 25 cents, plus 4 cents.

The term “delivery period” shall mean the period from the first to, and including, the last day of each month.

2. Class I milk means all milk sold or distributed by distributors as whole milk for consumption in the Los Angeles Sales Area.

Class II milk means all milk used by distributors to produce cream for sale or distribution by distributors as cream for consumption in the Los Angeles Sales Area.

Class III milk means all milk sold or used by distributors to produce ice cream and/or ice cream mix, for consumption in the Los Angeles Sales Area.

Class IV milk means the quantity of milk purchased, sold, used or distributed by distributors in excess of Class I, Class II and Class III milk.

Milk delivered to a distributors by producers during any delivery period and sold or distributed as milk or cream outside the Los Angeles Sales Area or sold by such distributor to another distributor (including any person who sells, uses or distributes such milk or cream

for ultimate consumption in any market with respect to which no License is in effect pursuant to section 8 (3) of the Act covering such purchase from producers and such sale as milk or cream) shall be accounted for by the first distributor as Class I or Class II milk, respectively, unless such first distributor on or before the date fixed for filing reports with the Market Administrator for such delivery period shall furnish to the Market Administrator proof satisfactory to the Market Administrator that such milk or cream has been utilized for a purpose other than sale, use or distribution for ultimate consumption as milk or cream, in which event such milk or cream shall be classified in accordance with such other use.

Any distributor purchasing milk and/or cream from another distributor shall, on or before the date fixed for filing reports with the Market Administrator, pursuant to paragraph 4 hereof, furnish to the distributor from whom he purchased such milk and/or cream, an affidavit as to the quantity of milk and/or cream sold, used or distributed in each of the classifications herein defined.

Any distributor, who does not sell or distribute whole milk for ultimate consumption in the Los Angeles Sales Area, may purchase milk from producers who do not have established bases. Such distributor

- (a) shall not sell cream to other distributors for distribution and ultimate consumption in the Los Angeles Sales Area at a price less than the price at which such distributor sells similar cream for distribution and ultimate consumption

nearest the location where milk is processed into such cream by such distributor, plus the reasonable cost of transporting such cream to the Los Angeles Sales Area.

- (b) Shall not be subject to any of the terms or provisions of this exhibit, except as set forth in subdivision (a) above, with respect to milk purchased from producers who do not have established bases; but
- (c) may at any time, with respect to such milk, be required by the Market Administrator to submit reports, containing such information as the Market Administrator may require, similar to the kind of information reported by other distributors pursuant to paragraph 4 hereof, which information shall be kept confidential in the manner provided in such paragraph.

3. The established base for each producer shall be the quantity of milk allotted to such producer in accordance with the provisions of exhibit B.

The delivered base for each producer shall be that quantity of milk delivered by such producer to distributors, which is not in excess of 90 per cent of the established base of such producer.

The delivered base for each distributor required to report pursuant to paragraph 4 (b) shall be the quantity of milk produced by such distributor and sold or distributed by him as Class I, Class II, Class III and Class IV milk which is not in excess of 90 per cent of the established base of such distributor. For the purpose of such computation and adjustments the amount

of exemption to which any distributor is entitled pursuant to the terms of paragraph 4 (b) shall be ratably deducted from (a) such distributors' total sales and uses not in excess of his delivered base, and (b) such distributors' total sales or uses in excess of his delivered base.

The Market Administrator shall, as far as may be practicable, adjust as to each delivery period, the percentage of established base constituting delivered base in order that the blended price for delivered base computed pursuant to paragraph 5 of section A, for such delivery period may approximate the Class I price set forth in paragraph I of section A; provided, however, that such percentage shall in no event be less than 80 per cent and not more than 100 per cent.

4. (a) On or before the 5th day of each delivery period each distributor to whom milk or cream was delivered during the preceding delivery period by (1) producers (who are not also distributors) and/or (2) by distributors (other than those who operate only stores or other establishments) shall report to the Market Administrator with respect to milk delivered during such delivery period, in a manner prescribed by the Market Administrator:

- (1) The actual deliveries, if any, in terms of butterfat pounds (at each location) of the producers (and new producers) supplying such distributor, the total quantity of milk represented by the delivered bases of all such producers, and the total quantity of milk represented by the excesses over delivered bases of all such producers;
- (2) The actual deliveries, if any, made to him by other distributors;

- (3) The quantities of milk delivered in terms of butterfat pounds which were sold, used or distributed by him as Class I, Class II, Class III and Class IV milk, respectively; and
- (4) Such other information as the Market Administrator may request for the purpose of performing the provisions of this exhibit.

(b) On or before the 5th day of each delivery period, each distributor who produces milk distributed by him as whole milk or cream shall submit reports to the Market Administrator containing the same information with respect to the preceding delivery period required in subdivision (a) of this paragraph, and in addition thereto the total amount of milk produced by such distributor and sold during such delivery period as Class I, Class II, Class III and Class IV milk.

Each such distributor shall be obligated to account to the Market Administrator for all of his sales of Class I, Class II, Class III, and Class IV milk, at the prices indicated in paragraph 1 of this Section, except that a distributor who neither

- (1) sells any part of the milk produced by him to other distributors (other than those who operate only stores or similar establishments) or to manufacturing plants, nor
- (2) purchases milk from other producers or distributors for distribution as whole milk or cream,

shall as to each delivery period (except the first three full delivery periods during which he sells or delivers milk as

a new producer) receive an exemption for that daily average volume of his sales and uses up to and including 20 pounds of butterfat (such amount to be adjusted from time to time by the Market Administrator so as to approximate the average amount of Class I and Class II milk handled per retail route by all distributors), which exemption shall be ratably deducted from such distributors' Class I, Class II, Class III, and Class IV sales or uses in proportion to the respective total amounts of such sales or uses in such classes. No exemption made pursuant to this subdivision shall be included by the Market Administrator in his computations made pursuant to paragraph 5 hereof.

Nothing contained in this subdivision shall be construed to mean that the aforesaid exemption shall apply to any distributor other than a person who produces milk distributed by himself as whole milk or cream.

All information furnished the Market Administrator pursuant to this paragraph 4 shall remain confidential in accordance with the provisions of the applicable General Regulations, Agricultural Adjustment Administration, but any such information shall be submitted by the Market Administrator to the Secretary at any time upon the request of the Secretary.

5. With respect to each delivery period, the Market Administrator shall:

- (a) Compute the total value, in each class, of all milk as reported by each and all distributors pursuant to paragraph 4, on the basis of the prices set forth in paragraph 1, making the appropriate adjustments as provided in section B, which com-

putation shall not include milk purchased by distributors from other distributors.

- (b) Compute the total quantity of milk in terms of butterfat pounds represented by the delivered bases of all producers as reported pursuant to paragraph 4.
- (c) Compute the value of the milk purchased, sold or used by all distributors in excess of the total delivered bases as reported pursuant to paragraph 4, of all producers excluding new producers by multiplying such excess quantity of milk in terms of butterfat pounds by the price provided for in paragraph 1 for Class IV milk.
- (d) Compute the total amount to be paid to new producers by all distributors as reported pursuant to paragraph 4 on the basis of the prices set forth in section G of this exhibit.
- (e) Compute the total value of the quantity of milk represented by the total delivered bases of all producers by subtracting from the amount obtained in subdivision (a) the amounts obtained in subdivisions (c) and (d).
- (f) Compute the total adjusted value of the quantity of milk represented by the total delivered bases of all producers as reported by distributors, pursuant to paragraph 4, by adding to the total value of such milk, as computed in subdivision (e), the adjustments provided for in section C (1).
- (g) Compute the blended price per butterfat pound for the quantity of milk represented by the total delivered bases of all producers by dividing the

amount obtained in subdivision (f) by the quantity of milk represented by the total delivered bases of all producers as determined in subdivision (b).

6. On or before the 10th day of each delivery period the Market Administrator shall notify all distributors who have reported pursuant to paragraph 4, of the blended price as determined above and of the Class IV price as provided for in paragraph 1 above.

Each such distributor shall pay to producers (including new producers) on or before the 15th day of each delivery period for milk delivered by such producers during the preceding delivery period subject to adjustments and deductions which are to be made pursuant to sections C and D of this exhibit:

- (a) to producers at the blended price for the quantity of milk delivered by each producer represented by such producer's delivered base; and
- (b) to producers at the Class IV price for the quantity of milk delivered by such producers in excess of such producers' delivered bases;
- (c) to new producers at the price provided in section G.

Provided that no provision in this License shall be construed as controlling or restricting any producers' cooperative association, licensed as a distributor under this License, with respect to the actual deductions, or charges, dividends or premiums to be made by such association from and/or to its members; but no such deductions or charges may be made by any such producer's cooperative association from any of its members, to meet a current operating loss incurred by such pro-

ducers' cooperative association in its processing or distribution operations unless (a) expressly and specifically authorized by any such member to make such deduction or charge for such purpose, and (b) the producers' cooperative association notifies the Market Administrator of the same.

7. The Market Administrator shall maintain for each distributor an adjustment account:

- (a) which shall be debited for the total value of the quantity of milk reported as received, sold, distributed or used by such distributor during the preceding delivery period computed pursuant to subdivision (a) of paragraph 5; and
- (b) which shall be credited for the total value of the quantity of milk reported by such distributor pursuant to paragraph 4 (excluding milk delivered by other distributors) on the basis of the prices to be paid to producers (and new producers) pursuant to paragraph 6. Such credit shall be made after giving effect to the adjustments to be made pursuant to paragraph 1 of section C, and before giving effect to the adjustments and deductions provided for in sections C (2) and D of this exhibit.

Balances due to the Market Administrator on adjustment accounts with respect to milk purchased during any delivery period shall be paid to the Market Administrator on or before the 15th day of the following delivery period. Any funds so paid to the Market Administrator shall, as soon as reasonably possible, be paid out by him pro rata among distributors in proportion to the amount

of adjustments to which, but only to the extent to which, they are entitled.

8. Any error in computation of payments or any discrepancies in reports of distributors or in the adjustment accounts shall be adjusted when settlements are made with respect to the following delivery period. Whenever the Market Administrator has a balance on hand in excess of any adjustments to be made to distributors, he may distribute such balance or any part thereof in an equitable manner among producers in the market.

9. The Market Administrator and/or any functioning producers' cooperative, hereinafter called "any Association" ("functioning producers' cooperative" means an association which, in the opinion of the Market Administrator, is furnishing services to its members in keeping with the requirements of the terms of this License), shall at all reasonable times have the right to check sampling, weighing, and butterfat tests made by distributors, for the purpose of determining the accuracy thereof. In the event of a discrepancy between weights and tests reported by distributors and weights and tests determined by the Market Administrator and/or any Association, settlements shall be made by distributors upon the basis of such weights and such butterfat content as the Market Administrator may in each case decide.

10. Producers shall have the right to deliver milk to country stations, plants or platforms of distributors, using such method of transportation as they, in their discretion, may select. No distributor shall interfere with or discriminate against producers in the exercise of such right. At the request of the Market Administrator, each

distributor, shall from time to time, submit a verified report stating the actual transportation charges on all milk delivered to him f. o. b. any and all plants and country stations, for the purpose of permitting the Market Administrator to review such transportation charges and to determine the reasonableness thereof.

SECTION B. ADJUSTMENTS IN COST OF MILK TO DISTRIBUTORS.

1. Each distributor shall make the following deductions from the prices to be paid for milk purchased as provided in paragraph 1 of section A:

(a) In respect to Class I milk delivered by producers to a receiving station, 100 miles or more from the Los Angeles City Hall, four (4) cents per pound butterfat and such reasonable rates for transportation per pound butterfat contained in such milk, between such receiving station and the plant from which wholesale and retail routes of such distributor are loaded, as may be fixed by the Market Administrator, not however, in excess of the rates scheduled for common carriers by the California Railway Commission with respect to equivalent transportation.

(b) In respect to Class II and Class III milk delivered to a receiving station, 100 miles or more from the Los Angeles City Hall, 7 cents per pound butterfat, and $\frac{1}{8}$ th of the transportation charges provided in subdivision (a) of this paragraph with respect to Class I milk;

2. Unless the prior written consent of the Market Administrator is obtained for some other basis of computa-

tion, the adjustments in the cost of milk to distributors made pursuant to this section shall be computed on the following basis:

- (a) the milk which was delivered to each distributor at locations in or nearest to the Los Angeles Sales Area, to the extent necessary to supply each such distributor with the milk sold, distributed or used by him as Class I milk, shall be classified as Class I milk;
- (b) any excess beyond that quantity of milk classified pursuant to subparagraph (a) above, delivered to each distributor at locations in or nearest to the Los Angeles Sales Area, to the extent necessary to supply each such distributor with the milk sold, distributed or used by him as Class II milk, shall be classified as Class II milk.

SECTION C. ADJUSTMENTS IN PAYMENTS TO PRODUCERS.

1. Each distributor shall make the following deductions from the payments to be made to producers (excluding new producers) as provided in section A:

- (a) In respect to all milk represented by the delivered bases of producers who deliver milk to such distributors at a receiving station, 100 miles or more from Los Angeles City Hall, the deductions provided in paragraph 1 (a) of section B.

2. Any distributor may, with the prior approval of the Market Administrator, make payments to producers in addition to the prices provided for in paragraph 6 of section A, provided that such additional payments are

made to all the producers supplying such distributor with milk of similar quality and grade. No distributor may accept services from or render services to a producer or an association of producers from whom he is purchasing milk without making a reasonable payment or charge, as the case may be, for such services.

SECTION D. DEDUCTIONS FROM PAYMENTS TO PRODUCERS.

1. Each distributor shall deduct $\frac{1}{2}$ cent per pound butterfat from the payments to be made by him pursuant to section A in regard to all milk delivered to him, and shall pay over such deduction to the Market Administrator simultaneously with making payment to producers for milk purchased.

Each distributor, who also produces milk which is sold, used, or distributed as either Class I, Class II, Class III, or Class IV milk, shall, on or before the 15th day of each delivery period, pay to the Market Administrator $\frac{1}{2}$ cent per pound butterfat with respect to all the milk produced by such distributor and sold, used, or distributed by him as Class I, Class II, Class III, or Class IV milk during the preceding delivery period.

2. Each distributor shall, in addition, deduct from the payments to be made by him pursuant to section A in regard to all milk delivered to him by producers who are not members of any association an amount which shall in no event exceed one cent per pound butterfat and which shall be used pursuant to subdivision (b) of paragraph 4 of this section. Such deductions shall be paid over to the Market Administrator, simultaneously with making payments to producers for milk purchased.

3. The Market Administrator, in his discretion, may at any time waive the foregoing payments, or any part thereof for any delivery period (in which event the deductions for payments so waived shall not be made by the distributors from payments to producers): PROVIDED, HOWEVER, that any such waiver shall be equal (a) among all producers with respect to the amounts paid to the Market Administrator pursuant to paragraph 1 above, and (b) among all producers not members of any Association with respect to the amounts deducted pursuant to paragraph 2 above.

4. The Market Administrator shall maintain separate accounts for the payments made to him pursuant to paragraphs 1 and 2. The Market Administrator shall apportion such monies in the following manner:

(a) The payments made pursuant to paragraph 1 shall be retained by the Market Administrator to meet his cost of operation; PROVIDED, HOWEVER, That any such funds which may remain over from such payments in excess of the cost of operation for any particular delivery period, shall be applied by the Market Administrator in meeting his cost of operation for the succeeding delivery period, and to the extent that it may be practical, the Market Administrator shall waive a portion of such deduction for the succeeding delivery period as hereinabove provided.

(b) The payments made pursuant to paragraph 2 shall be retained by the Market Administrator in a separate fund and shall be expended by him for the purpose of securing for producers who are not members of any association, market information, supervision of weights

and tests, guarantee against failure by distributors to make payments for milk purchased, and other similar benefits; PROVIDED, HOWEVER, That the Market Administrator may, in his discretion, employ the facilities and services of any agent or agents, and pay over such funds in such amount as he may determine to such agent or agents for the purpose of securing to such non-members the aforementioned benefits, if such benefits to non-members may be more efficiently and economically secured thereby. The Market Administrator shall pay over such funds to such agent or agents, if he determines to do so, only upon the consent of such agent or agents: (a) to keep its or their books and records in a manner satisfactory to the Market Administrator; (b) to permit the Market Administrator to examine its or their books and records, and to furnish the Market Administrator such verified reports or other information as the Market Administrator may from time to time request; and (c) to disburse such funds in the manner above provided.

(c) Whenever the Market Administrator has a balance on hand in either of the accounts provided for in subdivisions (a) and (b) of this paragraph, he may distribute such balance, or any part thereof, in an equitable manner, among the producers (including new producers); PROVIDED, HOWEVER, That any such distribution of the balance in the account provided for in subdivision (a) shall be made to all producers (including new producers), and any such distribution of the balance provided for in subdivision (b) shall be made only to all producers (including new producers) who are not members of any Association.

SECTION E. THE MARKET ADMINISTRATOR, — HIS DESIGNATION, DUTIES, AND COMPENSATION.

The Secretary shall designate the Market Administrator who shall perform such duties as may be provided for him in the License. The Market Administrator so designated shall be subject to removal, at any time, by the Secretary. Within forty-five (45) days following the date upon which he enters upon his duties, the Market Administrator shall execute and deliver to the Secretary his bond in such amount as the Secretary may determine, with surety thereon satisfactory to the Secretary, conditioned upon the faithful performance of his duties as such Market Administrator. The Market Administrator shall be entitled: (a) to reasonable compensation, which shall be determined by the Secretary; (b) to borrow money to meet his cost of operation until such time as the first payments are made to him pursuant to section D of this exhibit, which monies shall be repaid out of the payments retained by the Market Administrator pursuant to paragraph 4, subdivision (a), of said section D; and (c) to incur such other expenses, including compensation for persons employed by the Market Administrator as the Market Administrator may deem necessary for the proper conduct of his duties, and the cost of procuring and continuing his bond, which total expense shall be deemed to be the cost of operation of the Market Administrator. The Market Administrator shall not be held personally responsible in any way whatsoever to any licensee or to any other person for errors in judgment, mistakes of fact or other acts, either of commission or omission, except for acts of dishonesty, fraud, or malfeasance in office.

The Market Administrator shall keep such books and records as will clearly reflect the financial transactions provided for in this License. The Market Administrator shall permit the Secretary to examine his books and records at all times, and furnish the secretary such verified reports or other information as the Secretary may, from time to time, request of him.

The Market Administrator shall have the right to examine the books and records of the distributors and the books and records of the affiliates and subsidiaries of each distributor for the purpose of (1) verifying the reports and information furnished to the Market Administrator by each distributor pursuant to this License and/or (2) in the event of the failure of any distributor to furnish reports or information as required by this License, obtaining the information so required.

SECTION F. ESTABLISHMENT OF MILK INDUSTRY BOARD.

The Secretary may, in his discretion, at any time, establish a Milk Industry Board, which shall have representation of producers, distributors, and the public. In establishing the Milk Industry Board, the Secretary will give due consideration to the recommendations and nominations by various groups of producers, distributors and the public. The Milk Industry Board shall have such duties and powers as the Secretary may, from time to time, delegate to it in order to effectuate the provisions and purposes of this License. The Secretary may further, in his discretion, authorize and direct the Market Administrator to pay over to the Milk Industry Board for the purpose of meeting its general expenses, a portion

of the monies paid to the Market Administrator for his cost of operation, pursuant to section D of this exhibit, providing that such portion shall in no event exceed 1-16th cent per pound of butterfat contained in milk for which such payment is made.

SECTION G. NEW PRODUCERS.

1. New producers shall be those producers whose milk was neither being purchased by distributors nor being distributed in the Los Angeles Sales Area within 90 days prior to the effective date of this License.

2. Each distributor upon first receiving milk from any producer shall immediately report to the Market Administrator (1) the name of such producer, (2) the date on which such producer's milk was first received, and (3) whether or not such producer is a new producer.

3. Each distributor shall pay to each new producer for all milk delivered by or handled for such new producer from the date when milk is first received to the end of the third full delivery period after such date (excluding any emergency period during which such producer receives payment pursuant to paragraph 4 hereof), the Class IV price set forth in paragraph 1 of section A.

The Market Administrator shall allot a base to each new producer prior to the expiration of the first delivery period during which his milk is being sold in the Los Angeles Sales Area, which base shall be allotted in accordance with the provisions of exhibit B hereof. Provided, however, That such base shall not be effective for the purposes of exhibit A until the expiration of such third full delivery period.

4. During the emergency period when the normal supply of milk from producers who have established bases is not sufficient to meet the Class I requirements of any distributor, such distributor may, with the prior approval of the Market Administrator purchase milk of any producer who has no base; Provided, however, That in any such event, the producer selling such milk shall be paid for the same depending upon the ultimate use of such milk and at the prices as provided for in paragraph 1, section A, and such payment shall not be included in the computation as provided in paragraph 5 of section A, but shall be reported separately to the Market Administrator by the distributor who purchased the milk from such producer.

EXHIBIT B

RULES FOR ESTABLISHMENT OF BASES

1. For the purposes of the License, the term "established base" as used in respect to any producer shall mean:

- (a) In the case of producers for whom bases are recorded in the files and records of Milk Producers, Inc., (a non-profit corporation organized under the laws of the State of California) the quantity of butterfat recorded as such bases in the files and records of Milk Producers, Inc.; Provided, however, That Milk Producers, Inc. has given the Market Administrator access to such files and records.
- (b) In the case of producers for whom no bases are recorded in the files and records of Milk

Producers, Inc., bases shall be allotted by the Market Administrator, which bases shall be equitable as compared with the bases established pursuant to subdivision (a) above.

2. The Market Administrator may make such revisions in the bases of any and all producers as he may, from time to time, deem necessary or advisable, to the end that such bases may be equitable as among producers and that the total of all established bases may, so far as practical, be equal to the total quantity of milk sold or used by distributors as Class I and Class II milk.

3. Every distributor shall, within ten days of the effective date of this License, submit to the Market Administrator written reports, verified under oath, containing the following information (1) with respect to each producer who has delivered milk to such distributor and (2) for each calendar month during the years of 1933 and 1934 or such portion thereof as the producer may have delivered milk:

- (a) The total pounds of delivered milk.
- (b) The average percentage of butterfat in such delivered milk.
- (c) The total pounds of butterfat in such delivered milk.

Each distributor required to report pursuant to paragraph 4 of section A of exhibit A shall, in addition to the foregoing information, include in the report submitted by him a statement containing the following in-

formation with respect to each calendar month during the years 1933 and 1934 or such portion thereof as such distributor may have distributed or sold milk produced by himself: (a) the total quantity of milk produced by him and sold by him as Class I, Class II, Class III and Class IV milk, (b) the average percentage of butterfat in such milk, and (c) the total number of pounds of butterfat in such milk.

4. When bases are established for producers, as hereinabove provided, the Market Administrator shall notify each distributor of the bases of the producers, including those producers who are members of any functioning producers' association who are delivering milk to such distributor. Before the expiration of the first three full delivery periods that the milk of a new producer is sold to distributors, the Market Administrator shall notify the distributors of the base of such new producer.

5. A producer with a base, whether landlord or tenant, may retain his base when moving his entire herd from one farm to another farm.

6. A landlord who rents on shares is entitled to the entire base to the exclusion of the tenant, if the landlord owns the entire herd. Likewise, the tenant who rents on shares is entitled to the entire base to the exclusion of the landlord if the tenant owns the entire herd. If the cattle are jointly owned by tenant and landlord, the base shall be divided between the joint owners according to the ownership of the cattle if and when such joint owners terminate the tenant-landlord relationship.

7. Any producer who voluntarily ceases to market milk pursuant to the terms and provisions of this License

for a period of more than forty-five (45) consecutive days shall forfeit his base. In the event that he thereafter commences to market milk pursuant to the terms and provisions of this License, he shall be treated for the purposes of these rules as if he were a new producer.

8. A producer may at any time, on notice to the Market Administrator, relinquish his base: Provided, however, That such producer shall thereafter be treated as a new producer on having a base reallocated to him.

9. Any producer may transfer (a) his base to any person upon the sale of his herd to such person, (b) any portion of his base to any person upon a sale of a corresponding portion of his herd to such person. No such transfer shall be effective until written notice thereof is received by the Market Administrator.

10. Any producer whose average monthly delivery of milk for any three consecutive months is less than seventy-five (75) per cent of his base will thereby establish a new base equal to such average monthly delivery.

EXHIBIT C

SCHEDULE OF UNFAIR TRADE PRACTICES AND MINIMUM RESALE PRICES

1. To effectuate the purposes of this License and to aid in the enforcement of the provisions thereof, the sale of the following articles in the Los Angeles Sales Area by distributors at prices below the minimum prices

hereinafter set forth is prohibited. Such minimum prices shall be as follows:

	Retail (cents)	Wholesale (cents)	to Vendors (cents)
GRADE A MILK (Raw or Pasteurized)			
10 gallon cans		230	
3 gallon cans		70	65
2 gallon cans		48	45
1 gallon cans		26	23
Quarts	9	8	6½
Pints	6	5	4
Third Quarts	—	4	3
Half Pints	—	3	2
COFFEE CREAM (approx- imately 22 percent but- terfat)			
3 gallon cans		275	
2 gallon cans		185	
Quarts	27	25	22
Pints	16	15	13
Half Pints	9½	8½	7
TABLE CREAM (approx- imately 27 percent but- terfat)			
3 gallon cans		335	
2 gallon cans		225	
Quarts	33	30	27
Pints	20	18	16
Half Pints	11½	10½	9

WHIPPING CREAM (Approximately 38 percent butterfat)

3 gallon cans		450	
2 gallon cans		305	
Quarts	44	40	37
Pints	25	22	20
Half Pints	15	13½	12

2. The foregoing price schedule is without prejudice to the right of any distributor who asserts that such minimum prices are in excess of the prices necessary to accomplish the purposes set forth in paragraph 1 of this exhibit, to a hearing on the question of a modification of amendment of this License, in accordance with the applicable General Regulations, Agricultural Adjustment Administration.

3. The foregoing minimum prices shall not be applicable to any sales to any public unemployment relief agency (whether local, state or federal), to any private unemployment relief agency cooperating with or accredited by any public unemployment relief agency to any charitable institution or agency, to any hospital in connection with its charitable operations or to any government agency (whether local, state or federal) when such sales are upon competitive bids.

4. No distributor, or its officers, employees, or agents, shall employ any method or device whereby any article is sold or offered for sale at below the foregoing minimum prices, whether by discount, rebate, redeemable certificate, stamps, or tickets, free services or merchandise,

credit for articles returned, loans or credit outside the usual course of business, or combining prices for such articles together with another commodity sold, or by subsidy given for business or assistance in procuring business.

EXHIBIT "D"

UNITED STATES DEPARTMENT OF AGRICULTURE
AGRICULTURAL ADJUSTMENT ADMINISTRATION
WASHINGTON, D. C.

I, James K. Knudson, Acting Chief Hearing Clerk of the United States Department of Agriculture, Agricultural Adjustment Administration, pursuant to General Regulations, Series 7 thereof, do hereby certify:

1. That there has been filed in the office of the said Chief Hearing Clerk, a certain document in connection with a hearing held pursuant to Section 8 (3) of the Agricultural Adjustment Act, relating to the revocation and suspension of a certain license, to-wit:

CHAS. J. KURTZ, doing business under the
fictitious firm name of GOLDEN WEST
CREAMERY COMPANY

Case No. 17-1-4

which said document is now on file in the office of the Chief Hearing Clerk, and is as follows: Findings of Fact and Order of the Secretary Signed by H. A. Wallace, Secretary of Agriculture on the 28th day of July, 1934.

2. A true and correct copy of said document is attached hereto.

WITNESS my hand and official seal this 28th day of July, A.D., 1934.

(SEAL)

JAMES K. KNUDSON,
Acting Chief Hearing Clerk United States Department of Agriculture Agricultural Adjustment Administration

(Signed) JOSEPH A. WALSH
Deputy Hearing Clerk.

UNITED STATES DEPARTMENT OF AGRICULTURE
AGRICULTURAL ADJUSTMENT ADMINISTRATION
WASHINGTON, D. C.

In the Matter of CHAS. J. KURTZ, doing business under the fictitious firm name of GOLDEN WEST CREAMERY COMPANY

Before the Secretary of Agriculture
Case No. 17-1-4

FINDINGS OF FACT AND ORDER OF THE SECRETARY

On November 16, 1933, the Secretary of Agriculture duly issued License No. 17, License for Milk—Los Angeles Milk Shed, effective November 20, 1933, and continuously since said date Charles J. Kurtz, doing business under the fictitious firm name of Golden West Creamery Company, has been a distributor of fluid milk for consumption in the Los Angeles Sales Area and was a licensee under said License No. 17 from the effective date of said License No. 17 until the termination of said License No. 17 on May 31, 1934.

On February 21, 1934, a written order of the Secretary, as provided for in General Regulations, Series 3,

Sections 200 and 201, requiring respondent to show cause on or before the 5th day of March, 1934, why his said License No. 17 should not be revoked or suspended by the Secretary, was duly served upon the respondent.

The said Order to Show Cause contained the following statements of the alleged violations of the terms and conditions of the license by the respondent:

“(1) That said licensee, his officers, employees and agents, at divers times since November 20, 1933, has violated the terms and conditions of said license.

“(2) That said licensee, his officers, employees, and agents, at divers times since November 20, 1933, has violated Article III, Par. 1, of said license by purchasing fluid milk for distribution as fluid milk in the Los Angeles Sales Area at prices and under terms and conditions different from those provided for in said paragraph and as set forth in Exhibit “A” of the license.

“(3) That said licensee, his officers, employees, and agents, at divers times since November 20, 1933, has violated Article III, Par. 3 of said license, in that he has purchased and distributed fluid milk in violation of the terms and conditions as set forth in the Production and Surplus Control Plan provided for in Exhibit “C” of the license.

“(4) That said licensee, his officers, employees, and agents, at divers times since November 20, 1933, has violated Article III, Par. 4 (a) of said license by failing and refusing to file reports and statements with the Chairman of the Los Angeles Milk Industry Board, as provided for in said paragraph.

“(5) That said licensee, his officers, employees, and agents, at divers times since November 20, 1933, has violated Article III, Par. 4 (b) of said license by purchasing milk from producers for distribution as Grade “A” market milk in violation of the terms and conditions of said paragraph.

“(6) That said Licensee, his officers, employees, and agents, at divers times since November 20, 1933, has violated Article III, Par. 4 (b) of said license by purchasing milk from producers for distribution as Grade “A” market milk in violation of the terms and conditions of said paragraph, in that he has purchased fluid milk for consumption in the Los Angeles Sales Area from producers without being authorized by said producers to make the deductions as provided for in said paragraph of the license, and without making said deductions.

“(7) That said licensee, his officers, employees, and agents, at divers times since November 20, 1933, has violated Article III, Par. 4 (b) of said license by failing and refusing to pay to the Los Angeles Milk Industry Board the amounts deducted from producers, as provided for in said paragraph of the license.

“(8) That said licensee, his officers, employees, and agents, at divers times since November 20, 1933, has violated Article III, Par. 4 (b) of said license by failing and refusing to pay as a distributor to the Los Angeles Milk Industry Board the amounts therein required to be paid by him as a distributor.

“(9) That said licensee, his officers, employees, and agents, at divers times since November 20, 1933, has violated Article III, Par. 4 (c) of said license by pur-

chasing milk for distribution as Grade "A" market milk from producers in violation of the terms and conditions of said paragraph of said license.

"(10) That said licensee, his officers, employees, and agents, at divers times since November 20, 1933, has violated Article III, Par. 4 (c) of said license by purchasing milk for distribution as Grade "A" market milk from producers in violation of the terms and conditions of said paragraph of said license, and by failing and refusing to make the payments to the Los Angeles Milk Industry Board, required by said paragraph of said license.

"(11) That said licensee, his officers, employees, and agents, at divers times since November 20, 1933, has violated Article III, Par. 4 (d) of said license by failing and refusing to comply with the terms and conditions of said paragraph of said license.

"(12) That said licensee, his officers, employees, and agents, at divers times since November 20, 1933, has violated Article III, Par. 5 (a) of said license by failing and refusing to comply with the terms and conditions of his license, as set forth in said paragraph.

"(13) That said licensee, his officers, employees, and agents, at divers times since November 20, 1933, has violated Article III, Par. 5 (b) of said license by failing and refusing to comply with the terms and conditions of his license, as set forth in said paragraph.

"(14) That said licensee, his officers, employees, and agents, at divers times since November 20, 1933, has violated Article III, Par. 5 (a) and (b) of said license by purchasing milk for distribution as Grade "A" market

milk in the Los Angeles Sales Area from producers who are not members of any of the associations of producers listed in Par. 4 of Article III of said license without authorization from such producer to deduct, or cause to be deducted by the particular association of producers, if any, of which any such producer is a member, each month, certain sums therein required to be deducted and paid to Producers Arbitration Committee, Inc., or to its successor, Milk Producers, Inc., and without paying said sums to Milk Producers, Inc.

“(15) That said licensee, his officers, employees, and agents, at divers times since November 20, 1933, has violated Article III, Par. 14 of said license by failing and refusing to comply with the terms and conditions of his license, as set forth in said paragraph.”

In response to telegraphic request by counsel for respondent in the above entitled case, the time for filing his answer to said Order was extended to March 10, upon the condition that the hearing be held in Los Angeles, California, on March 16, 1934. Reserving his right to object to the jurisdiction of the Secretary or to the validity of the Order to Show Cause, this condition was agreeable to counsel for respondent, and a voluminous answer, consisting of twenty-seven pages with attached exhibit, was filed within the time specified to the charges set forth in said Order to Show Cause, in accordance with General Regulations, Series 3. In said answer the respondent, after objecting and excepting to the jurisdiction of the Secretary of Agriculture to hear or determine the issues presented in this matter, denied each and all of the allegations contained in the Order to Show Cause and

alleged numerous specific grounds as matters of defense to the charges made in said order. This answer is contained in Government Exhibit No. 1 which was submitted for the record made at the hearing.

A hearing was held on March 16, 1934, at 10 o'clock A. M., in the Assembly Room of the California State Building, Los Angeles, California, in accordance with the order of the Secretary, and as agreed to by counsel for the respondent, before Arthur P. Curran, Esq., Presiding Officer, an officer and employee of the United States Department of Agriculture, duly designated and appointed by the Secretary. The respondent appeared and was represented by Attorney Lewis D. Collings, The Secretary of Agriculture was represented by C. P. Dorr, Esq., and A. D. Hadley, Esq., of Washington, D. C.

It was stipulated at the hearing by counsel for all parties that the above entitled case be consolidated with the cases of Valley Dairy Company, Western Holstein Farms, Inc., and Lucerne Cream and Butter Company for the purpose of the trial, and that in determination of each case, the testimony applicable to all four cases, as well as the testimony pertaining to that particular case, should be considered.

At the outset, counsel for respondent raised certain objections to the jurisdiction of the Secretary to try the issues raised by the Order to Show Cause and the answer, which objections were overruled. Various actions to dismiss the proceedings based on lack of jurisdiction were also offered by counsel for respondent. After extended argument by both counsel for respondent and

counsel for the Government, and upon consideration of the authorities submitted, the various actions to dismiss were denied. At said hearing, after objecting to the introduction of any and all of the testimony to be introduced by counsel for the Secretary, counsel for the respondent participated fully in the proceedings and cross-examined fully the witnesses produced on behalf of the Secretary.

After ten full days consumed in the taking of testimony, on April 12, 1934, by agreement of counsel representing all parties, the hearing was adjourned until such time as the audit being made of the Los Angeles Milk Industry Board and Milk Producers, Inc., by representatives of the Comptroller of the Department of Agriculture, was completed. It was stipulated that the audit should be received in evidence at an adjourned hearing to be held in Washington in lieu of further cross-examination of Mr. Evans, Accountant, for the Milk Producers, Inc., and that this audit should be considered by the Secretary in arriving at his final determination with respect to the issues raised herein. However, it was further agreed that the respondents were to have the privilege to present such additional evidence as might come to their attention during the adjournment. Counsel for the respondents submitted to the auditors a statement of the various contentions for their consideration in completing the audit. The auditors considered these various contentions in making their audit and the audit was completed as agreed and copies furnished to the parties herein.

On May 31, 1934, the Secretary terminated License No. 17, License for Milk—Los Angeles Milk Shed, effective on and after 12:01 A. M., Eastern Standard Time, June 1, 1934. In said order of termination it was provided that “any and all obligations which have arisen, or which may hereafter arise in connection therewith, by virtue of, or pursuant to, such license, shall be deemed not to be affected, waived, or terminated hereby.”

On May 31, 1934, the Secretary duly issued License No. 57, License for Milk—Los Angeles, California, Sales Area, effective June 1, 1934, and continuously since said date Charles J. Kurtz, doing business under the fictitious firm name of Golden West Creamery Company, has been engaged in the business of distributing, marketing, or handling milk or cream as a distributor in the Los Angeles Sales Area and is a licensee duly licensed under said License No. 57. In Paragraph 4, Section 7, Article II, of said License No. 57, it was provided that: “Each and every distributor shall fulfill any and all of his obligations which shall have arisen or which may hereafter arise in connection with, by virtue of, or pursuant to, the License for Milk in the Los Angeles Sales Area, issued by the Secretary on November 16, 1933.”

Pursuant to notice duly served upon the respondents, and in accordance with the agreement entered into by the parties on April 12, 1934, the matter came on for further hearing on June 14, 1934, at Washington, D. C. Counsel for the respondents and counsel for the Government appeared at said adjourned hearing at the time and place specified in said notice. At the hearing, the audits, completed by the auditors of the Department of Agri-

culture, were introduced in evidence. After objecting to the introduction of the audits, which objections were overruled, counsel for the respondents examined Mr. Manley, under whose supervision the audits were made, with respect to various matters contained in the aforesaid audits.

On June 18, 1934, at the adjourned hearing, counsel for the Secretary moved to amend the Order to Show Cause, issued in the above entitled case, charging the respondent with failure to fulfill its obligations under the prior license No. 17, as provided for by Paragraph 4, Section 7, Article II of License No. 57, License for Milk,—Los Angeles, California, Sales Area, and in connection therewith offered for the record the order of the Secretary terminating License No. 17 and a certified copy of the new License No. 57. The order of the Secretary terminating License No. 17 was admitted in evidence without objection. Subject to respondent's objection, the Presiding Officer granted leave to counsel for the Government to amend the Order to Show Cause and received in evidence Government Exhibit No. 51 which was a certified copy of License No. 57. The amendment to the Order to Show Cause was presented by counsel for the Secretary and incorporated in the record. Thereupon, counsel for the respondent refused to participate further in the case and, waiving oral argument upon the record as thus made, asked permission to file a brief with respect to the propriety of the granting of the motion to amend said Order to Show Cause. The permission was granted and counsel for the respondent thereupon withdrew from the hearing.

The fullest opportunity to be heard and to produce evidence bearing upon the issues presented was afforded to the Secretary and to the respondent and both said parties were fully heard. At the close of the hearing neither counsel for the respondent nor for Government made any argument but were content to have the decision arrived at upon the record as made and brief filed therein. The hearing consumed twelve full days.

Thereafter the Presiding Officer made Findings of Fact and Recommendations and reported the same to the Secretary together with the record of the proceedings including the Order to Show Cause, Answer, stenographic report of all the oral testimony and all the documentary evidence offered and received, and a brief filed by the respondent with a transcript of all testimony and documentary evidence offered and received in the aforesaid four consolidated cases, and the briefs filed therein.

Upon the record thus made, the Secretary of Agriculture in addition to the foregoing, makes the following Specific Findings of Fact:

(1) That the respondent, Charles J. Kurtz, doing business under the fictitious firm name of Golden West Creamery Company, has his place of business at Moneta, California.

(2) That the respondent purchases fluid milk from producers in the Los Angeles Milk Shed and distributes said milk for consumption as fluid milk in the Los Angeles Sales Area.

(3) That the respondent, since the effective date of License No. 17 and prior thereto, including the period described in the license as the "production base period,"

has been engaged in distributing fluid milk for consumption in the Los Angeles Sales Area and was a licensee duly licensed under License No. 17 from the effective date of said License No. 17, November 20, 1933, until the termination of said license on May 31, 1934.

(4) That the respondent, since the effective date of License No. 57, has been and is in the business of distributing, marketing and handling milk and cream as a distributor in the Los Angeles Sales Area and is a licensee duly licensed under License No. 57.

(5) That in the marketing of fluid milk produced in the Los Angeles Milk Shed, and in the distribution of said fluid milk in the Los Angeles Sales Area, both interstate and intrastate commerce are so inextricably intermingled that said marketing and distribution of fluid milk in the Los Angeles Sales Area are in the current of interstate commerce. And further that intrastate commerce in such marketing and distribution of fluid milk in the Los Angeles Sales Area effects, burdens, and competes with interstate commerce in such marketing and distribution of fluid milk and of milk products in such a manner as to bring the distribution and marketing of fluid milk within said area in the current of interstate commerce and under the power of regulation vested in the Secretary of Agriculture by the Agricultural Adjustment Act, and the business of the respondent in the marketing and distribution of fluid milk within said area is such as to bring him within the said current of interstate commerce.

(6) That certain producers from whom the respondent purchased fluid milk did, at various times during the period covered by License No. 17, ship fluid milk to the surplus plant operated by Milk Producers, Inc., which is successor to Producers Arbitration Committee, Inc., as provided for in said License No. 17.

(7) That large quantities of the butter, cheese and other dairy products manufactured at the surplus plant operated by Milk Producers, Inc., which is successor to Producers Arbitration Committee, Inc., from milk delivered to said plant by producers within the said area, were shipped in interstate commerce.

(8) That the Los Angeles Milk Industry Board was duly organized in accordance with the terms of said License No. 17: that the said Board was composed of thirteen members who were properly selected in accordance with the provisions of Exhibit D of said license, all of which appointments to said Board were approved by the Secretary, as provided for in said license.

(9) That the said Los Angeles Milk Industry Board has functioned continuously since its creation in the performance of its duties, as set forth in said License No. 17.

(10) That the said Los Angeles Milk Industry Board, in accordance with the provisions of Exhibit D of the said License, made certain arrangements to determine under the provisions of Paragraph 9 of Exhibit C of said License No. 17 whether the daily average quantity of milk sold for consumption as whole milk in the Los Angeles Sales Area had become so decreased as to render impractical in its opinion the accounting for such

variations through adjustments in the base price paid producers.

(11) That, pursuant to Paragraph 9 of Exhibit C of License No. 17, the Los Angeles Milk Industry Board determined that the daily average quantity of milk sold for consumption in the Los Angeles Sales Area had become so decreased as to render impractical the accounting for such variations through adjustments in the base price as provided for in Paragraph 4, Schedule "C," "Establishment of Adjusted Base Price."

(12) That, pursuant to Paragraph 9 of Exhibit C of License No. 17, Milk Producers, Inc., successor to Producers Arbitration Committee, Inc., made certain uniform decreases for each month in all existing established bases of producers to the end that the sum total of all bases adjusted would again approximate in amount the daily average quantity of milk sold for consumption as whole milk in the Los Angeles Sales Area.

(13) That the various percentages of scale downs in existing established bases of producers by said Milk Producers, Inc., successor to Producers Arbitration Committee, Inc., for the respective periods were approved by the Los Angeles Milk Industry Board and by the Secretary, as provided by Paragraph 9 of Exhibit C of License No. 17—"Establishment of Adjusted Base Price."

(14) That the existing established base of each producer was determined by Milk Producers, Inc., successor to Producers Arbitration Committee, Inc., on the basis of deliveries of producers during the base period March

16, 1933, to June 15, 1933, both dates inclusive, ascertained from reports of distributors, which include producer-distributors, covering deliveries to them or milk produced by them for this period. The total deliveries of each producer divided by the number of days in the base period established the producer's general daily average base. This general daily average base was scaled down pursuant to Paragraph 9 of Exhibit C of License No. 17, to arrive at an adjusted basic average for each producer for the period. The resultant total was the quantity that the producer was to deliver or sell as base milk. Milk delivered or sold in excess of this monthly base was treated as surplus milk.

(15) That Milk Producers, Inc., successor to Producers Arbitration Committee, Inc., was operating the surplus plant, as provided for in Exhibit C of said License, accounting to producers delivering milk to it for the full base price as set forth in said license in respect to deliveries not in excess of the individual producer's adjusted base as determined above, and for the surplus price in respect of deliveries in excess of producer's adjusted base.

(16) That the amounts determined by Milk Producers, Inc., successor to Producers Arbitration Committee, Inc., to be due and payable to it by distributors in the Los Angeles Sales Area, including the respondent, as surplus deductions, represented the difference between the base price and the surplus price for the various periods here under consideration as provided in said License No. 17 and were approved by the Los Angeles Milk Industry Board.

(17) That operating statements for the periods November 20, 1933, to November 30, 1933, December, 1933, January, 1934, and February, 1934, were prepared from the books and records of Milk Producers, Inc., successor to Producers Arbitration Committee, Inc., which statements reflect the recorded transactions for the above named periods and reveal a loss attributable to the operation of the surplus plant for the periods above set forth.

(18) That the operating charges incurred by the surplus plant operated by Milk Producers, Inc., successor to Producers Arbitration Committee, Inc., were approved by the proper authorities and represent reasonable items of expense.

(19) That a charge of 1c per pound of butterfat was set up for the month of December, 1933, through adjustment of the base price for that period with respect to working capital and that the methods adopted by Milk Producers, Inc., successor to Producers Arbitration Committee, Inc., in arriving at the amounts to be charged to working capital were ratified and approved by the Los Angeles Milk Industry Board, as provided by Paragraphs 7 and 8 of Exhibits C—"Establishment of Adjusted Base Price," of said License No. 17.

(20) That the methods adopted by Milk Producers, Inc., successor to Producers Arbitration Committee, Inc., in arriving at surplus deductions were reasonable and were approved by the Los Angeles Milk Industry Board and by the Secretary.

(21) That a small quantity of Grade B milk was handled by the surplus plant; that in the handling of said

milk no loss was incurred and that the income from Grade B milk resulting from the sale of butter, powdered skim and other manufactured products arising therefrom more than offset the price paid for Grade B milk and the manufacture thereof.

(22) That the Los Angeles Milk Industry Board is audited monthly by Martin J. Masters, certified public accountant, Los Angeles, California, which audits indicate that the items of expense incurred by said Board were proper in effectuating the purposes and principles embodied in License No. 17.

(23) That said licensee, his employees and agents in the State of California at divers times since November 20, 1933, has violated Article III, Section 1 of said License under License No. 17 by purchasing fluid milk for distribution under terms and conditions other than those set forth in Exhibit A of said License.

(24) That the respondent failed to file, prior to the 5th day of each month, with the Chairman of the Los Angeles Milk Industry Board, a statement of the quantity of milk purchased from each producer, as provided for by Paragraph 4 (a) of Article III of said License.

(25) That, pursuant to Paragraph 4 (b) of said License, the Los Angeles Milk Industry Board made a determination that distributors be billed at the rate of $\frac{1}{4}c$ per pound butterfat contained in the milk purchased by distributors and $\frac{1}{4}c$ per pound butterfat for all milk distributed.

(26) That the respondent purchased fluid milk for distribution as Grade A market milk, from producers

without obtaining the authorization of such producers to pay over to the Los Angeles Milk Industry Board amounts of $\frac{1}{4}c$ for each pound of butterfat contained in said milk purchased by the respondent, determined by said board to be payable to it, and failed and refused to pay over said amounts to said Board.

(27) That the respondent was billed monthly for the above amounts determined by the Los Angeles Milk Industry Board to be due under Paragraph 4 (b) of Article III of said License, and subsequently corrected billings with respect to the foregoing periods were sent to the respondent in respect of the amounts determined by the Los Angeles Milk Industry Board to be due under Paragraph 4 (b) of Article III of said License.

(28) That the respondent failed to pay over to the Los Angeles Milk Industry Board the amount of $\frac{1}{4}c$ as a distributor, for each pound of butterfat contained in the milk distributed by said respondent, as provided by Paragraph 4 (b) of Article III of said License.

(29) That, pursuant to provisions of Paragraph (4) (c) of Article III of said license, the Los Angeles Milk Industry Board made a determination each month of the average amount of the deductions which the members of the associations therein named authorized the distributors to pay over to such associations in behalf of their respective members, for the purpose of determining an amount to be paid equal to said average by producers not members of the associations therein named to the Los Angeles Milk Industry Board; that said determinations were corrected in accordance with reports submitted to it by said associations.

(30) That the said respondent purchased milk for distribution as Grade A market milk from producers not members of the associations therein named without obtaining the authorization of such producers to pay over to the Los Angeles Milk Industry Board the amounts determined by the Los Angeles Milk Industry Board under Paragraph 4 (c) as due and payable to it.

(31) That the said respondent was billed monthly for the amounts determined to be due by the Los Angeles Milk Industry Board under Paragraph 4 (c) of Article III of said license; and later was furnished with corrected billings with respect to said amounts; that the respondent failed to pay over to the Los Angeles Milk Industry Board said corrected amounts so determined by said Board to be payable to it.

(32) That the respondent has failed to pay and has not paid to the Los Angeles Milk Industry Board the deductions required in accordance with the provisions of Paragraph 4 (b) and Paragraph 4 (c) of Article III of said License which payments were required to be made at the time for making payments to producers for milk purchased pursuant to Paragraph 4 (d) of said License No. 17.

(33) That the respondent purchased milk for distribution as Grade A market milk from the producers who were not members of the associations listed in Paragraph 4 of Article III of said license and that the respondent did not and has not secured the authorization of such producers to deduct as surplus deductions each month the amounts required to be deducted in accord-

ance with the provisions of Paragraph 5 (b) of Article III of said License.

(34) That the Los Angeles Milk Industry Board made a determination of the amounts due and payable to the Milk Producers, Inc., as surplus deductions.

(35) That the respondent was billed monthly for the amounts determined to be payable as surplus deductions to Milk Producers, Inc., as provided for by Paragraph 5 (b) of Article III of said license, and that, subsequently, corrected billings were sent to the respondent with respect to the amounts due and payable as surplus deductions to Milk Producers, Inc., successor to Producers Arbitration Committee, Inc.

(36) That the respondent failed to pay the sums estimated as surplus deductions to Milk Producers, Inc., successor to Producers Arbitration Committee, Inc., for each month, as provided for by Paragraph 5 (b) of Article III and Exhibit C of said License.

(37) That the failure by the respondent to comply with each and all of the aforesaid provisions of License No. 17 constitutes a violation of the respective provisions of said License No 17 and also constitutes a violation of Paragraph 4, Section 7, Article II of License No. 57, License for Milk—Los Angeles, California, Sales Area.

CONCLUSION

Based upon the foregoing Findings of Fact I hereby determine and conclude that the facts and circumstances proved in this case establish and prove the charges Nos. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, and 13 of the said Order to Show Cause and prove the violations by the respond-

ent of License No. 17, as charged therein, and therefore establish and prove violations by the respondent of Article II, Section 7, Paragraph 4 of License No. 57 as charged in the amendment to the Order to Show Cause.

I further determine that any one of said violations of License No. 17 so established and proved warrants independently the revocation of the license of the respondent under License No. 57.

ORDER

The Secretary of Agriculture hereby issues the following Order:

IT IS HEREBY ORDERED that the License of Charles J. Kurtz, doing business under the fictitious firm name of Golden West Creamery Company under License No. 57, License for Milk, Los Angeles, California, Sales Area, be and it is hereby revoked.

IT IS FURTHER ORDERED that this Order shall become effective on and after 6:00 P. M., Pacific Time on the 28th day of July, 1934.

IT IS FURTHER ORDERED that a copy of this Order be served on Charles J. Kurtz, doing business under the fictitious firm name of Golden West Creamery Company, by depositing the same in the United States mail registered and addressed to Charles J. Kurtz, at his last known address, to wit: Moneta, California.

IN WITNESS WHEREOF I have hereunto set my hand and caused the official seal of the Department of Agriculture to be affixed hereto in the City of Washington, District of Columbia, this 28th day of July, 1934.

(SEAL)

(SIGNED) H. A. WALLACE

Secretary of Agriculture.

EXHIBIT "E"

UNITED STATES DEPARTMENT OF AGRICULTURE
AGRICULTURAL ADJUSTMENT ADMINISTRATION
WASHINGTON, D. C.

I, James K. Knudson, Acting Chief Hearing Clerk of the United States Department of Agriculture, Agricultural Adjustment Administration, pursuant to General Regulations, Series 7 thereof, do hereby certify:

1. That there has been filed in the office of the said Chief Hearing Clerk, a certain document in connection with a hearing held pursuant to Section 8 (3) of the Agricultural Adjustment Act, relating to the revocation and suspension of a certain license, to-wit:

WESTERN HOLSTEIN FARMS, INC.

a California corporation Case No. 17-1-5

which said document is now on file in the office of the Chief Hearing Clerk, and is as follows: Findings of Fact and Order of the Secretary signed by the Secretary of Agriculture, H. A. Wallace, on this 28th day of July, 1934.

2. A true and correct copy of said document is attached hereto.

WITNESS my hand and official seal this 28th day of July, A. D., 1934.

SEAL

James K. Knudson,
Acting Chief Hearing Clerk
United States Department of Agriculture
Agricultural Adjustment Administration

(SIGNED) JOSEPH A. WALSH

Deputy Hearing Clerk

UNITED STATES DEPARTMENT OF AGRICULTURE
 AGRICULTURAL ADJUSTMENT ADMINISTRATION
 WASHINGTON, D. C.

IN THE MATTER OF
 WESTERN HOLSTEIN FARMS, INC.,
 a California corporation

Before the
 Secretary of
 Agriculture
 Case No. 17-1-5

FINDINGS OF FACT AND ORDER OF THE
 SECRETARY.

On November 16, 1933, the Secretary of Agriculture duly issued License No. 17, License for Milk—Los Angeles Milk Shed, effective November 20, 1933, and continuously since said date Western Holstein Farms, Inc., a California corporation, has been a distributor of fluid milk for consumption in the Los Angeles Sales Area and was a licensee under said License No. 17 from the effective date of said License No. 17 until the termination of said License No. 17 on May 31, 1934.

On February 21, 1934, a written order of the Secretary, as provided for in General Regulations, Series 3, Sections 200 and 201, requiring respondent to show cause on or before the 5th day of March, 1934, why its License No. 17 should not be revoked or suspended by the Secretary, was duly served upon the respondent.

The said Order to Show Cause contained the following statements of the alleged violations of the terms and conditions of the license by the respondent:

“(1) That said licensee, its officers, employees and agents, at divers times since November 20, 1933, has violated the terms and conditions of said license.

“(2) That said licensee, its officers, employees and agents, at divers times since November 20, 1933, has violated Article III, paragraph 1 of said license, by purchasing fluid milk for distribution as fluid milk in the Los Angeles Sales Area at prices and under terms and conditions different from those provided for in said paragraph and as set forth in Exhibit ‘A’ of the license.

“(3) That said licensee, its officers, employees and agents, at divers times since November 20, 1933, has violated Article III, paragraph 3 of the license, in that it has purchased and distributed fluid milk in violation of the terms and conditions as set forth in the Production and Surplus Control Plan provided for in Exhibit ‘C’ of the license.

“(4) That said licensee, its officers, employees and agents, at divers times since November 20, 1933, has violated Article III, paragraph 4 (a) of the license, by failing and refusing to file reports and statements with the Chairman of the Los Angeles Milk Industry Board, as provided for in said paragraph of the license.

“(5) That said licensee, its officers, employees and agents, at divers times since November 20, 1933, has violated Article III, paragraph 4 (b) of said license, by purchasing milk from producers for distribution as Grade A Market Milk in violation of the terms and conditions of said paragraph.

“(6) That said licensee, its officers, employees and agents, at divers times since November 20, 1933, has violated Article III, paragraph 4 (b) of said license, by purchasing milk from producers for distribution as Grade A Market Milk in violation of the terms and con-

ditions of said paragraph, in that it has purchased fluid milk for consumption in the Los Angeles Sales Area from producers without being authorized by said producers to make the deductions as provided for in said paragraph of the license, and without making said deductions.

“(7) That said licensee, its officers, employees and agents, at divers times since November 20, 1933, has violated Article III, paragraph 4 (b) of said license, by failing and refusing to pay to the Los Angeles Milk Industry Board the amounts deducted from such producers, as provided for in said paragraph of the license.

“(8) That said licensee, its officers, employees and agents, at divers times since November 20, 1933, has violated Article III, paragraph 4 (b) of said license, by failing and refusing to pay as a distributor to the Los Angeles Milk Industry Board the amounts therein required to be paid by said licensee as a distributor.

“(9) That said licensee, its officers, employees and agents, at divers times since November 20, 1933, has violated Article III, paragraph 4 (b) of said license, by failing and refusing to deduct and pay over to the Los Angeles Milk Industry Board the amounts therein provided to be deducted and paid over for each pound of butter fat contained in milk produced by said licensee.

“(10) That said licensee, its officers, employees and agents, at divers times since November 20, 1933, has violated Article III, paragraph 4 (c) of said license, by purchasing milk for distribution as Grade A Market Milk from producers in violation of the terms and conditions of said paragraph of the license.

“(11) That said licensee, its officers, employees and agents, at divers times since November 20, 1933, has violated Article III, paragraph 4 (c) of said license, by purchasing milk for distribution as Grade A Market Milk from producers in violation of the terms and conditions of said paragraph of the license, and by failing and refusing to make the payments to the Los Angeles Milk Industry Board required by said paragraph of said license.

“(12) That said licensee, its officers, employees and agents, at divers times since November 20, 1933, has violated Article III, paragraph 4 (d) of said license, by failing and refusing to comply with the terms and conditions of said paragraph of said license.

“(13) That said licensee, its officers, employees and agents, at divers times since November 20, 1933, has violated Article III, paragraph 5 (a) of said license, by failing and refusing to comply with the terms and conditions of its license as set forth in said paragraph.

“(14) That said licensee, its officers, employees and agents, at divers times since November 20, 1933, has violated Article III, paragraph 5 (b) of said license, by failing and refusing to comply with the terms and conditions of its license as set forth in said paragraph.

“(15) That said licensee, its officers, employees and agents, at divers times since November 20, 1933, has violated Article III, paragraph 5 (a) and (b) of said license, by purchasing milk for distribution as Grade “A” Market Milk in the Los Angeles Sales Area from producers who are not members of any of the associations of producers listed in Paragraph 4 of Article III of said

license without authorization from such producers to deduct, or cause to be deducted by the particular association of producers, if any, of which any such producer is a member, each month, certain sums therein required to be deducted and paid to Producers Arbitration Committee, Inc., or to its successor, Milk Producers, Inc., and without paying said sums to Milk Producers, Inc.

“(16) That said licensee, its officers, employees and agents, at divers times since November 20, 1933, has violated Article III, paragraph 5 (c) of said license, by failing and refusing to comply with the terms and conditions of its license as set forth in said paragraph.

“(17) That said licensee, its officers, employees and agents, at divers times since November 20, 1933, has violated Article III, paragraph 5 (c) of said license, by failing and refusing to pay each month to Producers Arbitration Committee, Inc., or its successor, Milk Producers, Inc., certain sums therein required to be paid, based upon the said licensee’s production of milk for distribution by said licensee as Grade “A” Market Milk in the Los Angeles Sales Area.

“(18) That said licensee, its officers, employees and agents, at divers times since November 20, 1933, has violated Article III, paragraph 14 of said license, by failing and refusing to comply with the terms and conditions of its license as set forth in said paragraph.”

In response to a telegraphic request by counsel for respondent in the above entitled case, the time for filing its answer to said Order was extended to March 10, 1934, upon the condition that the hearing be held in Los Angeles, California, on March 16, 1934. Reserving

its right to object to the jurisdiction of the Secretary or to the validity of the Order to Show Cause, this condition was agreeable to counsel for respondent, and a voluminous Answer, consisting of twenty-six pages with an attached exhibit, was filed within the time specified to the charges set forth in said Order to Show Cause, in accordance with General Regulations, Series 3. In said Answer the respondent, after objecting and excepting to the jurisdiction of the Secretary of Agriculture to hear or determine the issues presented in this matter, denied each and all of the allegations contained in the Order to Show Cause and alleged numerous specific grounds as matters of defense to the charges made in said order. This Answer is contained in Government Exhibit No. 1 which was submitted for the record made at the hearing.

A hearing was held on March 16, 1934, at 10 o'clock A. M., in the Assembly Room of the California State Building, Los Angeles, California, in accordance with the order of the Secretary, and as agreed to by counsel for the respondent, before Arthur P. Curran, Esq., Presiding Officer, an officer and employee of the United States Department of Agriculture, duly designated and appointed by the Secretary. The respondent appeared and was represented by attorney, Lewis D. Collings. The Secretary of Agriculture was represented by C. P. Dorr, Esq., and A. D. Hadley, Esq., of Washington, D. C.

It was stipulated at the hearing by counsel for all parties that the above entitled case be consolidated with the cases of Charles J. Kurtz, doing business under the

fictitious firm name of Golden West Creamery Company, Valley Dairy Company, and Lucerne Cream and Butter Company, for the purpose of the trial, and that in determination of each case, the testimony applicable to all four cases, as well as the testimony pertaining to that particular case, should be considered.

At the outset, counsel for respondent raised certain objections to the jurisdiction of the Secretary to try the issues raised by the Order to Show Cause and the Answer, which objections were overruled. Various motions to dismiss the proceedings based on lack of jurisdiction were also offered by counsel for respondent. After extended argument by both counsel for respondent and counsel for the Government, and upon consideration of the authorities submitted, the various motions to dismiss were denied. At said hearing, after objecting to the introduction of any and all of the testimony to be introduced by counsel for the Secretary, counsel for the respondent participated fully in the proceedings and cross-examined fully the witnesses produced on behalf of the Secretary.

After ten full days consumed in the taking of testimony, on April 12, 1934, by agreement of counsel representing all parties, the hearing was adjourned until such time as the audit being made of the Los Angeles Milk Industry Board and Milk Producers, Inc., by representatives of the comptroller of the Department of Agriculture, was completed. It was stipulated that the audit should be received in evidence at an adjourned hearing to be held in Washington in lieu of further cross-examination of Mr. Evans, Accountant for the Milk Pro-

ducers, Inc., and that this audit should be considered by the Secretary in arriving at his final determinations with respect to the issues raised herein. However, it was further agreed that the respondents were to have the privilege to present such additional evidence as might come to their attention during the adjournment. Counsel for the respondents submitted to the auditors a statement of the various contentions for their consideration in completing the audit. The auditors considered these various contentions in making their audit and the audit was completed as agreed and copies furnished to the parties herein.

On May 31, 1934, the Secretary terminated License No. 17, License for Milk—Los Angeles Milk Shed, effective on and after 12:01 A. M., Eastern Standard Time, June 1, 1934. In said order of termination it was provided that “any and all obligations which have arisen, or which may hereafter arise in connection therewith, by virtue of, or pursuant to, such license, shall be deemed not to be effected, waived, or terminated hereby.”

On May 31, 1934, the Secretary duly issued License No. 57, License for Milk—Los Angeles, California, Sales Area, effective June 1, 1934, and continuously since said date the Western Holstein Farms, Inc., a California corporation, has been engaged in the business of distributing, marketing, or handling milk or cream as a distributor in the Los Angeles Sales Area and is a licensee duly licensed under said License No. 57. In Paragraph 4, Section 7, Article II, of said License No. 57 it was provided that: “Each and every distributor shall fulfill any and all of his obligations which

shall have arisen or which may hereafter arise in connection with, by virtue of, or pursuant to, the License for Milk in the Los Angeles Sales Area issued by the Secretary on November 16, 1933.”

Pursuant to notice duly served upon the respondents, and in accordance with the agreement entered into by the parties on April 12, 1934, the matter came on for further hearing on June 14, 1934, at Washington, D. C. Counsel for the respondents and counsel for the Government appeared at said adjourned hearing at the time and place specified in said notice. At the hearing, the audits, completed by the auditors of the Department of Agriculture, were introduced in evidence. After objecting to the introduction of the audits, which objections were overruled, counsel for the respondents examined Mr. Manley, under whose supervision the audits were made, with respect to various matters contained in the aforesaid audits.

On June 18, 1934, at the adjourned hearing, counsel for the Secretary moved to amend the Order to Show Cause, issued in the above entitled case, charging the respondent with failure to fulfill its obligations under the prior License No. 17, as provided for by Paragraph 4, Section 7, Article II of License No. 57, License for Milk—Los Angeles, California, Sales Area, and in connection therewith offered for the record the order of the Secretary terminating License No. 17 and a certified copy of the new License No. 57. The order of the Secretary terminating License No. 17 was admitted in evidence without objection. Subject to respondent's objection, the Presiding Officer granted leave to counsel

for the Government to amend the Order to Show Cause and received in evidence Government Exhibit No. 51 which was a certified copy of License No. 57. The amendment to the Order to Show Cause was presented by counsel for the Secretary and incorporated in the record. Thereupon, counsel for the respondent refused to participate further in the case and, waiving oral argument upon the record as thus made, asked permission to file a brief with respect to the propriety of the granting of the motion to amend said Order to Show Cause. The permission was granted and counsel for the respondent thereupon withdrew from the hearing.

The fullest opportunity to be heard and to produce evidence bearing upon the issues presented was afforded to the Secretary and to the respondent and both said parties were fully heard. At the close of the hearing neither counsel for the respondent nor for the Government made any argument but were content to have the decision arrived at upon the record as made and brief filed therein. The hearing consumed twelve full days.

Thereafter the Presiding Officer made Findings of Fact and Recommendations and reported the same to the Secretary together with the record of the proceedings, including the Order to Show Cause, Answer, stenographic report of all the oral testimony and all the documentary evidence offered and received, and a brief filed by the respondent, with a transcript of all testimony and documentary evidence offered and received in the aforesaid four consolidated cases, and the briefs filed therein.

Upon the record thus made, the Secretary of Agriculture, in addition to the foregoing, makes the following Specific Findings of Fact:

(1) That the respondent, Western Holstein Farms, Inc., is a California corporation whose address is 3402 South Avalon Boulevard, Los Angeles, California.

(2) That the respondent purchases fluid milk from producers in the Los Angeles Milk Shed and distributes said milk for consumption in the Los Angeles Sales Area and also has a production of its own of milk produced in the Los Angeles Milk Shed which it distributes for consumption as fluid milk in the Los Angeles Sales Area.

(3) That the respondent, since the effective date of License No. 17 and prior thereto, including the period described in the License as the "production base period," has been engaged in distributing fluid milk for consumption in the Los Angeles Sales Area and was a licensee duly licensed under License No. 17 from the effective date of said License No. 17, November 20, 1933, until the termination of said License on May 31, 1934.

(4) That the respondent, since the effective date of License No. 57, has been and is in the business of distributing, marketing and handling milk and cream as a distributor in the Los Angeles Sales Area and is a licensee duly licensed under License No. 57.

(5) That in the marketing of fluid milk produced in the Los Angeles Milk Shed and in the distribution of said fluid milk in the Los Angeles Sales Area, both interstate and intrastate commerce are so inextricably intermingled that said marketing and distribution of fluid milk in the Los Angeles Sales Area are in the current of interstate commerce. And further that intrastate commerce in such marketing and distribution of fluid milk in the Los Angeles Sales Area effects, burdens, and competes with

interstate commerce in such marketing and distribution of fluid milk and of milk products in such a manner as to bring the distribution and marketing of fluid milk within said area in the current of interstate commerce and under the power of regulation vested in the Secretary of Agriculture by the Agricultural Adjustment Act, and the business of the respondent in the marketing and distribution of fluid milk within said area is such as to bring it within the said current of interstate commerce.

(6) That large quantities of the butter, cheese and other dairy products manufactured at the surplus plant operated by Milk Producers, Inc., which is successor to Producers Arbitration Committee, Inc., from milk delivered to said plant by producers within the said area, were shipped in interstate commerce.

(7) That the Los Angeles Milk Industry Board was duly organized in accordance with the terms of said License No. 17; that the said Board was composed of thirteen members who were properly selected in accordance with the provisions of Exhibit D of said License, all of which appointments to said Board were approved by the Secretary, as provided for in said License.

(8) That the said Los Angeles Milk Industry Board has functioned continuously since its creation in the performance of its duties, as set forth in said License No. 17.

(9) That the said Los Angeles Milk Industry Board, in accordance with the provisions of Exhibit D of the said License, made certain arrangements to determine under the provisions of Paragraph 9 of Exhibit C of said License No. 17 whether the daily average quantity

of milk sold for consumption as whole milk in the Los Angeles Sales Area had become so decreased as to render impractical in its opinion the accounting for such variations through adjustments in the base price paid producers.

(10) That pursuant to Paragraph 9 of Exhibit C of License No. 17, the Los Angeles Milk Industry Board determined that the daily average quantity of milk sold for consumption in the Los Angeles Sales Area had become so decreased as to render impractical the accounting for such variations through adjustments in the base price as provided for in Paragraph 4, Schedule "C," "Establishment of Adjudged Base Price."

(11) That pursuant to Paragraph 9 of Exhibit C of License No. 17, Milk Producers, Inc., successor to Producers Arbitration Committee, Inc., made certain uniform decreases for each month in all existing established bases of producers to the end that the sum total of all bases adjusted would again approximate in amount the daily average quantity of milk sold for consumption as whole milk in the Los Angeles Sales Area.

(12) That the various percentages of scale downs in existing established bases of producers by said Milk Producers, Inc., successor to Producers Arbitration Committee, Inc., for the respective periods were approved by the Los Angeles Milk Industry Board and by the Secretary, as provided by Paragraph 9 of Exhibit C of License No. 17—"Establishment of Adjusted Base Price."

(13) That the existing established base of each producer was determined by Milk Producers, Inc., successor

to Producers Arbitration Committee, Inc., on the basis of deliveries of producers during the base period March 16, 1933 to June 15, 1933, both dates inclusive, ascertained from reports of distributors, which include producer-distributors, covering deliveries to them or milk produced by them for this period. The total deliveries of each producer divided by the number of days in the base period established the producer's general daily average base. This general daily average base was scaled down, pursuant to Paragraph 9 of Exhibit C of License No. 17, to arrive at an adjusted basic average for each producer for the period. The resultant total was the quantity that the producer was to deliver or sell as base milk. Milk delivered or sold in excess of this monthly base was treated as surplus milk.

(14) That Milk Producers, Inc., successor to Producers Arbitration Committee, Inc., was operating the surplus plant, as provided for in Exhibit C of said License, accounting to producers delivering milk to it for the full base price as set forth in said License in respect of deliveries not in excess of the individual producer's adjusted base as determined above, and for the surplus price in respect of deliveries in excess of producer's adjusted base.

(15) That the amounts determined by Milk Producers, Inc., successor to Producers Arbitration Committee, Inc., to be due and payable to it by distributors in the Los Angeles Sales Area, including the respondent, as surplus deductions, represented the difference between the base price and the surplus price for the various periods here under consideration as provided in said

License No. 17, and were approved by the Los Angeles Milk Industry Board.

(16) That operating statements for the periods November 20, 1933, to November 30, 1933, December, 1933, January, 1934, and February, 1934, were prepared from the books and records of Milk Producers, Inc., successor to Producers Arbitration Committee, Inc., which statements reflect the recorded transactions for the above named periods and reveal a loss attributable to the operation of the surplus plant for the periods above set forth.

(17) That the operating charges incurred by the surplus plant operated by Milk Producers, Inc., successor to Producers Arbitration Committee, Inc., were approved by the proper authorities and represent reasonable items of expense.

(18) That a charge of 1c per pound of butterfat was set up for the month of December, 1933, through adjustment of the base price for that period with respect to working capital and that the methods adopted by Milk Producers, Inc., successor to Producers Arbitration Committee, Inc., in arriving at the amounts to be charged to working capital were ratified and approved by the Los Angeles Milk Industry Board, as provided by Paragraphs 7 and 8 of Exhibit C—"Establishment of Adjusted Base Price", of said License No. 17.

(19) That the methods adopted by Milk Producers, Inc., successors to Producers Arbitration Committee, Inc., in arriving at surplus deductions were reasonable and were approved by the Los Angeles Milk Industry Board and by the Secretary.

(20) That a small quantity of Grade B Milk was handled by the surplus plant; that in the handling of said milk no loss was incurred and that the income from Grade B milk resulting from the sale of butter, powdered skim and other manufactured products arising therefrom more than offset the price paid for Grade B milk and the manufacture thereof.

(21) That the Los Angeles Milk Industry Board is audited monthly by Martin J. Masters, certified public accountant, Los Angeles, California, which audits indicate that the items of expense incurred by said Board were proper in effectuating the purposes and principles embodied in License No. 17.

(22) That said licensee, its officers, employees and agents in the State of California at divers times since November 20, 1933, has violated Article III, Section 1 of said License under License No. 17 by purchasing fluid milk for distribution under terms and conditions other than those set forth in Exhibit A of said License.

(23) That the respondent failed to file, prior to the 5th day of each month, with the Chairman of the Los Angeles Milk Industry Board, a statement of (a) the quantity of milk purchased from each producer, and (b) the quantity produced and sold as fluid milk, as provided for by Paragraph 4 (a) of Article III of said License.

(24) That, pursuant to Paragraph 4 (b) of said License, the Los Angeles Milk Industry Board made a determination that distributors be billed at the rate of $\frac{1}{4}c$ per pound butterfat contained in the milk pur-

chased by distributors and $\frac{1}{4}$ c per pound butterfat for all milk distributed.

(25) That the respondent purchased fluid milk, for distribution as Grade A market milk, from producers without obtaining the authorization of such producers to pay over to the Los Angeles Milk Industry Board amounts of $\frac{1}{4}$ c for each pound of butterfat contained in said milk purchased by the respondent, determined by said Board to be payable to it, and failed and refused to pay over to said Board said amount and also an additional amount of $\frac{1}{4}$ c for each pound of butterfat contained in milk produced by it.

(26) That the respondent was billed monthly for the above amounts determined by the Los Angeles Milk Industry Board to be due under Paragraph 4 (b) of Article III of said License, and subsequently corrected billings with respect to the foregoing periods were sent to the respondent in respect of the amounts determined by the Los Angeles Milk Industry Board to be due under Paragraph 4 (b) of Article III of said License.

(27) That the respondent failed to pay over to the Los Angeles Milk Industry Board the amount of $\frac{1}{4}$ c, as a distributor, for each pound of butterfat contained in the milk distributed by said respondent, as provided by Paragraph 4 (b) of Article III of said License.

(28) That, pursuant to provisions of Paragraph 4 (c) of Article III of said License, the Los Angeles Milk Industry Board made a determination each month of the average amount of the deduction which the members of the association therein named authorized the distributors to pay over to such associations in behalf

of their respective members, for the purpose of determining an amount to be paid equal to said average by producers not members of the associations therein named to the Los Angeles Milk Industry Board; that said determinations were corrected in accordance with reports submitted to it by said associations.

(29) That the said respondent purchased milk for distribution as Grade A Market milk from producers not members of the associations therein named without obtaining the authorization of such producers to pay over to the Los Angeles Milk Industry Board the amounts determined by the Los Angeles Milk Industry Board under Paragraph 4 (c) as due and payable to it.

(30) That the said respondent was billed monthly for the amounts determined to be due by the Los Angeles Milk Industry Board under Paragraph 4 (c) of Article III of said License; and later was furnished with corrected billings with respect to said amounts: that the respondent failed to pay over to the Los Angeles Milk Industry Board said corrected amounts so determined by said Board to be payable to it.

(31) That the respondent has failed to pay and has not paid to the Los Angeles Milk Industry Board the deductions required in accordance with the provisions of Paragraph 4 (b) and Paragraph 4 (c) of Article III of said License, which payments were required to be made at the time for making payments to producers for milk purchased, pursuant to Paragraph 4 (d) of said License No. 17.

(32) That the respondent purchased milk for distribution as Grade A Market Milk from the producers who

were not members of the associations listed in Paragraph 4 of Article III of said License and that the respondent did not and has not secured the authorization of such producers to deduct as surplus deductions each month the amounts required to be deducted in accordance with the provisions of Paragraph 5 (b) of Article III of said License.

(33) That the Los Angeles Milk Industry Board made a determination of the amounts due and payable to Milk Producers, Inc., as surplus deductions.

(34) That the respondent was billed monthly for the amounts determined to be payable as surplus deductions to Milk Producers, Inc., as provided for by Paragraph 5 (b) and Paragraph 5 (c) of Article III of said License, and that subsequently corrected billings were sent to the respondent with respect to the amounts due and payable as surplus deductions to Milk Producers, Inc., successors to Producers Arbitration Committee, Inc.

(35) That the respondent failed to pay the sums estimated as surplus deductions to Milk Producers, Inc., successors to Producers Arbitration Committee, Inc., for each month, as provided for by Paragraph 5 (b) and Paragraph 5 (c) of Article III and Exhibit C of said License.

(36) That the failure by the respondent to comply with each and all of the aforesaid provisions of License No. 17 constitutes a violation of the respective provisions of said License No. 17 and also constitutes a violation of Paragraph 4, Section 7, Article II of License No. 57, License for Milk—Los Angeles, California, Sales Area.

CONCLUSION

Based upon the foregoing Findings of Fact I hereby determine and conclude that the facts and circumstances proved in this case establish and prove the charges Nos. (1), (2), (3), (4), (5), (6), (7), (8), (9), (10), (11), (12), (14), (16) and (17), of the said Order to Show Cause, and prove the violations by the respondent of License No. 17, as charged herein, and, therefore, establish and prove violation by the respondent of Article II, Section 7, Paragraph 4 of License No. 57, as charged in the amendment to the Order to Show Cause.

I further determine that any one of said violations so established and proved warrants independently the revocation of the license of the respondent under License No. 57.

ORDER

The Secretary of Agriculture hereby issues the following Order:

IT IS HEREBY ORDERED that the License of WESTERN HOLSTEIN FARMS, INC., a California corporation, under License No. 57, License for Milk—Los Angeles, California, Sales Area, be and it is hereby revoked.

IT IS FURTHER ORDERED that this Order shall become effective on and after 6:00 P. M. Pacific Time, on the 28 day of July, 1934.

IT IS FURTHER ORDERED that a copy of this order be served on WESTERN HOLSTEIN FARMS, INC., a California corporation, by depositing the same in the United States mail registered and addressed to WESTERN HOLSTEIN FARMS, INC., at its last known address, to-wit: 3402 South Avalon Boulevard, Los Angeles, California.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the official seal of the United States Department of Agriculture to be affixed in the City of Washington, D. C. this 28th day of July, 1934.

(SEAL) (SIGNED) H. A. WALLACE,
Secretary of Agriculture.

EXHIBIT "F"

UNITED STATES DEPARTMENT OF AGRICULTURE
AGRICULTURAL ADJUSTMENT ADMINISTRATION
WASHINGTON, D. C.

I, James K. Knudson, Acting Chief Hearing Clerk of the United States Department of Agriculture, Agricultural Adjustment Administration, pursuant to General Regulations, Series 7 thereof, do hereby certify:

1. That there has been filed in the office of the said Chief Hearing Clerk, a certain document in connection with a hearing held pursuant to Section 8 (3) of the Agricultural Adjustment Act, relating to the revocation and suspension of a certain license, to-wit:

VALLEY DAIRY CO., INC.,
A California Corporation. Case No. 17-1-7

which said document is now on file in the office of the Chief Hearing Clerk, and is as follows: Findings of Fact and Order of the Secretary signed by the Secretary of Agriculture, H. A. Wallace, on this 28th day of July, 1934.

2. A true and correct copy of said document is attached hereto.

WITNESS my hand and official seal this 28th day of July, A. D., 1934.

James K. Knudson,
Acting Chief Hearing Clerk
(SEAL) United States Department of Agriculture
Agricultural Adjustment Administration
(SIGNED) JOSEPH A. WALSH
Deputy Hearing Clerk

UNITED STATES DEPARTMENT OF AGRICULTURE
AGRICULTURAL ADJUSTMENT ADMINISTRATION
WASHINGTON, D. C.

IN THE MATTER OF
VALLEY DAIRY CO., INC.,
A California Corporation

Before the
Secretary of
Agriculture
Case No. 17-1-7

FINDINGS OF FACT AND ORDER OF
THE SECRETARY

On November 16, 1933, the Secretary duly issued License No. 17, License for Milk—Los Angeles Milk Shed, effective November 20, 1933, and continuously since said date Valley Dairy Co., Inc., a California corporation, has been a distributor of fluid milk for consumption in the Los Angeles Sales Area and was a licensee under said License No. 17 from the effective date of said License No. 17 until the termination of said License No. 17 on May 31, 1934.

On February 21, 1934, a written order of the Secretary, as provided for in General Regulations, Series 3, Sections 200 and 201, requiring respondent to show cause on or before the 5th day of March, 1934, why its said

license under License No. 17 should not be revoked or suspended by the Secretary, was duly served upon the respondent.

The said Order to Show Cause contained the following statements of the alleged violations of the terms and conditions of the license by the respondent:

(1) That said licensee, its officers, employees and agents, at divers times since November 20, 1933, has violated the terms and conditions of said license.

(2) That said licensee, its officers, employees and agents, has at divers times since November 20, 1933, violated Article III, paragraph 1 of said license, by purchasing fluid milk for distribution as fluid milk in the Los Angeles Sales Area at prices and under terms and conditions different from those provided for in said paragraph and as set forth in Exhibit "A" of the license.

(3) That said licensee, its officers, employees and agents, at divers times since November 20, 1933, has violated Article III, paragraph 3 of said license, in that it has purchased and distributed fluid milk in violation of the terms and conditions as set forth in the Production and Surplus Control Plan as provided for in Exhibit "C" of the license.

(4) That said licensee, its officers, employees and agents, at divers times since November 20, 1933, has violated Article III, paragraph 4 (b) of said license by purchasing milk from producers for distribution as Grade A Market Milk in violation of the terms and conditions of said paragraph of the license.

(5) That said licensee, its officers, employees and agents, at divers times since November 20, 1933, has

violated Article III, paragraph 4 (b) of said license by purchasing milk from producers for distribution as Grade A Market Milk in violation of the terms and conditions of said paragraph, in that it has purchased fluid milk for consumption in the Los Angeles Sales Area from producers without being authorized by said producers to make the deductions as provided for in said paragraph of the license, and without making said deductions.

(6) That said licensee, its officers, employees and agents, at divers times since November 20, 1933, has violated Article III, paragraph 4 (b) of said license, by failing and refusing to pay to the Los Angeles Milk Industry Board the amounts deducted from producers, as provided for in said paragraph of the license.

(7) That said licensee, its officers, employees and agents, at divers times since November 20, 1933, has violated Article III, paragraph 4 (b) of said license, by failing and refusing to pay, as a distributor, to the Los Angeles Milk Industry Board the amounts therein required to be paid by it as a distributor.

(8) That said licensee, its officers, employees and agents, at divers times since November 20, 1933, has violated Article III, paragraph 4 (b) of said license, by failing and refusing to deduct and pay over to the Los Angeles Milk Industry Board the amounts therein provided to be deducted and paid over for each pound of butterfat contained in milk produced by said licensee.

(9) That said licensee, its officers, employees and agents, at divers times since November 20, 1933, has violated Article III, paragraph 4 (c) of said license,

by purchasing milk for distribution as Grade A Market Milk from producers in violation of the terms and conditions of said paragraph of the license.

(10) That said licensee, its officers, employees and agents, at divers times since November 20, 1933, has violated Article III, paragraph 4 (c) of said license, by purchasing milk for distribution as Grade A Market Milk from producers in violation of the terms and conditions of said paragraph of the license, and by failing and refusing to make the payments to the Los Angeles Milk Industry Board required by said paragraph of said license.

(11) That said licensee, its officers, employees and agents at divers times since November 20, 1933, has violated Article III, paragraph 4 (d) of said license, by failing and refusing to comply with the terms and conditions of said paragraph of said license.

(12) That said licensee, its officers, employees and agents, at divers times since November 20, 1933, has violated Article III, paragraph 5 (a) of said license, by failing and refusing to comply with the terms and conditions of its license as set forth in said paragraph.

(13) That said licensee, its officers, employees and agents, at divers times since November 20, 1933, has violated Article III, paragraph 5 (b) of said license, by failing and refusing to comply with the terms and conditions of its license as set forth in said paragraph.

(14) That said licensee, its officers, employees and agents, at divers times since November 20, 1933, has violated Article III, paragraph 5 (a) and (b) of said license, by purchasing milk for distribution as Grade A Market

Milk in the Los Angeles Sales Area from producers who are not members of any of the associations of producers listed in paragraph 4 of Article III of said license without authorization from such producers to deduct, or cause to be deducted by the particular association of producers, if any, of which any such producer is a member, each month, certain sums therein required to be deducted and paid to Producers Arbitration Committee, Inc., or to its successor, Milk Producers, Inc., and without paying said sums to Milk Producers, Inc.

(15) That said licensee, its officers, employees and agents, at divers times since November 20, 1933, has violated Article III, paragraph 5 (c) of said license, by failing and refusing to comply with the terms and conditions of its license as set forth in said paragraph.

(16) That said licensee, its officers, employees and agents, at divers times since November 20, 1933, has violated Article III, paragraph 5 (c) of said license, by failing and refusing to pay each month to Producers Arbitration Committee, Inc., or its successor, Milk Producers, Inc., certain sums therein required to be paid, based upon said licensee's production of milk for distribution by said licensee as Grade A Market Milk in the Los Angeles Sales Area.

(17) That said licensee, its officers, employees and agents, at divers times since November 20, 1933, has violated Article III, paragraph 14 of said license, by failing and refusing to comply with the terms and conditions of its license as set forth in said paragraph.

In response to a telegraphic request by counsel for respondent in the above entitled case, the time for filing its

answer to said Order was extended to March 10, upon the condition that the hearing be held in Los Angeles, California, on March 16, 1934. Reserving its right to object to the jurisdiction of the Secretary or to the validity of the Order to Show Cause, this condition was agreeable to counsel for respondent, and an Answer, consisting of eighteen pages, was filed within the time specified to the charges set forth in said Order to Show Cause, in accordance with General Regulations, Series 3. In said Answer the respondent, after objecting and excepting to the jurisdiction of the Secretary of Agriculture to hear or determine the issues presented in this matter, denied each and all of the allegations contained in the Order to Show Cause and alleged numerous specific grounds as matters of defense to the charges made in said order. This Answer is contained in Government Exhibit No. 1 which was submitted for the record made at the hearing.

A hearing was held on March 16, 1934, at 10 o'clock A. M., in the Assembly Room of the California State Building, Los Angeles, California, in accordance with the order of the Secretary, and as agreed to by counsel for the respondent before Arthur P. Curran, Esq., Presiding Officer, an officer and employee of the United States Department of Agriculture, duly designated and appointed by the Secretary. The respondent appeared and was represented by attorney J. H. Johnston. The Secretary of Agriculture was represented by C. P. Dorr, Esq., and A. D. Hadley, Esq. of Washington, D. C.

It was stipulated at the hearing by counsel for all parties that the above entitled case be consolidated with the

cases of Charles J. Kurtz, Lucerne Cream and Butter Company, and Western Holstein Farms, Inc., for the purpose of the trial, and that in determination of each case, the testimony applicable to all four cases, as well as the testimony pertaining to that particular case, should be considered.

At the outset, counsel for respondent raised certain objections to the jurisdiction of the Secretary to try the issues raised by the Order to Show Cause and the answer, which objections were overruled. Various motions to dismiss the proceedings based on lack of jurisdiction were also offered by counsel for respondent. After extended argument by both counsel for respondent and counsel for the Government, and upon consideration of the authorities submitted, the various motions to dismiss were denied. At said hearing, after objecting to the introduction of any and all of the testimony to be introduced by counsel for the Secretary, counsel for the respondent participated fully in the proceedings and cross examined fully the witnesses produced on behalf of the Secretary.

After ten full days consumed in the taking of testimony, on April 12, 1934, by agreement of counsel representing all parties, the hearing was adjourned until such time as the audit being made of the Los Angeles Milk Industry Board and Milk Producers, Inc., by representatives of the Comptroller of the Department of Agriculture, was completed. It was stipulated that the audit should be received in evidence at an adjourned hearing to be held in Washington in lieu of further cross-examination of Mr. Evans, Accountant for the

Milk Producers, Inc., and that this audit should be considered by the Secretary in arriving at his final determinations with respect to the issues raised herein. However, it was further agreed that the respondents were to have the privilege of presenting such additional evidence as might come to their attention during the adjournment. Counsel for the respondents submitted to the auditors a statement of the various contentions for their consideration in completing the audit. The auditors considered these various contentions in making their audit and the audit was completed as agreed and copies furnished to the parties herein.

On May 31, 1934, the Secretary terminated License No. 17, License for Milk—Los Angeles Milk Shed, effective on and after 12:01 A. M., Eastern Standard Time, June 1, 1934. In said order of termination it was provided that “any and all obligations which have arisen, or which may hereafter arise in connection therewith, by virtue of or pursuant to, such license, shall be deemed not to be affected, waived, or terminated hereby.”

On May 31, 1934, the Secretary duly issued License No. 57, License for Milk—Los Angeles, California, Sales Area, effective June 1, 1934, and continuously since said date the Lucerne Cream and Butter Company, a California corporation, has been engaged in the business of distributing, marketing or handling milk or cream as a distributor in the Los Angeles Sales Area and is a licensee duly licensed under said License No. 57. In Paragraph 4, Section 7, Article II of said License No. 57 it was provided that: “Each and every distributor shall fulfill any and all of his obligations which shall

have arisen or which may hereafter arise in connection with, by virtue of or pursuant to the License for milk in the Los Angeles Sales Area issued by the Secretary on November 16, 1933."

Pursuant to notice duly served upon the respondents, and in accordance with the agreement entered into by the parties on April 12, 1934, the matter came on for further hearing on June 14, 1934, at Washington, D. C. Counsel for the respondents and counsel for the Government appeared at said adjourned hearing at the time and place specified in said notice. At the hearing, the audits, completed by the auditors of the Department of Agriculture, were introduced in evidence. After objecting to the introduction of the audits, which objections were overruled, counsel for the respondents examined Mr. Manley, under whose supervision the audits were made, with respect to various matters contained in the aforesaid audits.

On June 18, 1934, at the adjourned hearing, counsel for the Secretary moved to amend the Order to Show Cause, issued in the above entitled case, charging the respondent with failure to fulfill its obligations under the prior License No. 17, as provided for by Paragraph 4, Section 7, Article II of License No. 57, License for Milk—Los Angeles, California, Sales Area, and in connection therewith offered for the record the order of the Secretary terminating License No. 17 and a certified copy of the new License No. 57. The order of the Secretary terminating License No. 17 was admitted in evidence without objection. Subject to respondent's objection, the Presiding Officer granted leave to counsel for

the Government to amend the Order to Show Cause and received in evidence Government Exhibit No. 51 which was a certified copy of License No. 57. The amendment to the Order to Show Cause was presented by counsel for the Secretary and incorporated in the record. Thereupon, counsel for the respondent refused to participate further in the case and, waiving oral argument upon the record as thus made, asked permission to file a brief with respect to the propriety of the granting of the motion to amend said Order to Show Cause. The permission was granted and counsel for the respondent thereupon withdrew from the hearing.

The fullest opportunity to be heard and to produce evidence bearing upon the issues presented was afforded to the Secretary and to the respondent and both said parties were fully heard. At the close of the hearing neither counsel for the respondent nor for Government made any argument but were content to have the decision arrived at upon the record as made and brief filed therein. The hearing consumed twelve full days.

Thereafter the Presiding Officer made Findings of Fact and a Recommendation and reported the same to the Secretary together with the record of the proceedings including the Order to Show Cause. Answer, stenographic report of all the oral testimony and all the documentary evidence offered and received, and a brief filed by the respondent with a transcript of all testimony and documentary evidence offered and received in the aforesaid four consolidated cases, and the briefs filed therein.

Upon the record thus made, the Secretary of Agriculture in addition to the foregoing, makes the following Specific Findings of Fact:

(1) That the respondent, Valley Dairy Co., Inc., is a California corporation, whose address is 2401 Fletcher Drive, Glendale, California.

(2) That the respondent purchases fluid milk from producers in the Los Angeles Milk Shed and distributes said milk for consumption in the Los Angeles Sales Area and also has a production of its own milk produced in the Los Angeles Milk Shed which it distributes for consumption as fluid milk in the Los Angeles Sales Area.

(3) That the respondent, since the effective date of License No. 17 and prior thereto, including the period described in the license as the "production base period", has been engaged in distributing fluid milk for consumption in the Los Angeles Sales Area and was a licensee duly licensed under License No. 17 from the effective date of said License No. 17, November 20, 1933, until the termination of said License on May 31, 1934.

(4) That the respondent, since the effective date of License No. 57, has been and is in the business of distributing, marketing and handling milk and cream as a distributor in the Los Angeles Sales Area and is a licensee duly licensed under License No. 57.

(5) That in the marketing of fluid milk produced in the Los Angeles Milk Shed and in the distribution of said fluid milk in the Los Angeles Sales Area, both interstate and intrastate commerce are so inextricably intermingled that said marketing and distribution of fluid milk in the Los Angeles Sales Area are in the current of interstate commerce. And further that intrastate com-

merce in such marketing and distribution of fluid milk in the Los Angeles Sales Area affects, burdens, and competes with interstate commerce in such marketing and distribution of fluid milk and of milk products in such a manner as to bring the distribution and marketing of fluid milk within said area in the current of interstate commerce and under the power of regulation vested in the Secretary of Agriculture by the Agricultural Adjustment Act, and the business of the respondent in the marketing and distribution of fluid milk within said area is such as to bring it within the said current of interstate commerce.

(6) That certain producers from whom the respondent purchased fluid milk did, at various times during the period, ship fluid milk to the surplus plant operated by Milk Producers, Inc., which is successor to Producers Arbitration Committee, Inc., as provided for in said License No. 17.

(7) That large quantities of the butter, cheese and other dairy products manufactured at the surplus plant operated by Milk Producers, Inc., which is successor to Producers Arbitration Committee, Inc., from milk delivered to said plant by producers within the said area, were shipped in interstate commerce.

(8) That the Los Angeles Milk Industry Board was duly organized in accordance with the terms of said License No. 17; that the said Board was composed of thirteen members who were properly selected in accordance with the provisions of Exhibit D of said license, all of which appointments to said Board were approved by the Secretary, as provided for in said license.

(9) That the said Los Angeles Milk Industry Board has functioned continuously since its creation in the performance of its duties, as set forth in said License No. 17.

(10) That the said Los Angeles Milk Industry Board, in accordance with the provisions of Exhibit D of the said License, made certain arrangements to determine under the provisions of Paragraph 9 of Exhibit C of said License No. 17 whether the daily average quantity of milk sold for consumption as whole milk in the Los Angeles Sales Area had become so decreased as to render impractical in its opinion the accounting for such variations through adjustments in the base price paid producers.

(11) That pursuant to Paragraph 9 of Exhibit C of License No. 17, the Los Angeles Milk Industry Board determined that the daily average quantity of milk sold for consumption in the Los Angeles Sales Area had become so decreased as to render impractical the accounting for such variations through adjustments in the base price as provided for in Paragraph 4, Schedule "C", "Establishment of Adjusted Base Price."

(12) That pursuant to Paragraph 9 of Exhibit C of License No. 17, Milk Producers, Inc., successor to Producers Arbitration Committee, Inc., made certain uniform decreases for each month in all existing established bases of producers to the end that the sum total of all bases adjusted would again approximate in amount the daily average quantity of milk sold for consumption as whole milk in the Los Angeles Sales Area.

(13) That the various percentages of scale downs in existing established bases of producers by said Milk Producers, Inc., successors to Producers Arbitration Committee, Inc., for the respective periods were approved by the Los Angeles Milk Industry Board and by the Secretary, as provided by Paragraph 9 of Exhibit C of License No. 17—"Establishment of Adjusted Base Price."

(14) That the existing established base of each producer was determined by Milk Producers, Inc., successor to Producers Arbitration Committee, Inc., on the basis of deliveries of producers during the base period March 16, 1933, to June 15, 1933, both dates inclusive, ascertained from reports of distributor which include producer-distributors covering deliveries to them or milk produced by them for this period. The total deliveries of each producer divided by the number of days in the base period established the producer's general daily average base. This general daily average base was scaled down pursuant to Paragraph 9 of Exhibit C of License No. 17 to arrive at an adjusted basic average for each producer for the period. The resultant total was the quantity that the producer was to deliver or sell as base milk. Milk delivered or sold in excess of this monthly base was treated as surplus milk.

(15) That Milk Producers, Inc., successor to Producers Arbitration Committee, Inc., was operating the surplus plant, as provided for in Exhibit C of said License, accounting to producers delivering milk to it for the full base price as set forth in said License in respect of deliveries not in excess of the individual pro-

ducer's adjusted base as determined above, and for the surplus price in respect of deliveries in excess of producer's adjusted base.

(16) That the amounts determined by Milk Producers, Inc., successor to Producers Arbitration Committee, Inc., to be due and payable to it by distributors in the Los Angeles Sales Area, including the respondent, as surplus deductions, represented the difference between the base price and the surplus price for the various periods here under consideration as provided in said License No. 17 and were approved by the Los Angeles Milk Industry Board.

(17) That operating statements for the periods November 20, 1933, to November 30, 1933, December, 1933, January, 1934, and February, 1934, were prepared from the books and records of Milk Producers Inc., successor to Producers Arbitration Committee, Inc., which statements reflect the recorded transactions for the above named periods and reveal a loss attributable to the operation of the surplus plant for the periods above set forth.

(18) That the operating charges incurred by the surplus plant operated by Milk Producers, Inc., successor to Producers Arbitration Committee, Inc., were approved by the proper authorities and represent reasonable items of expense.

(19) That a charge of 1c per pound of butterfat was set up for the month of December, 1933, through adjustment of the base price for that period with respect to working capital and that the methods adopted by Milk Producers, Inc., successor to Producers Arbitration Committee, Inc., in arriving at the amounts to be charged to

working capital were ratified and approved by the Los Angeles Milk Industry Board, as provided by Paragraphs 7 and 8 of Exhibit C—"Establishment of Adjusted Base Price", of said License No. 17.

(20) That the methods adopted by Milk Producers, Inc., successor to Producers Arbitration Committee, Inc., in arriving at surplus deductions were reasonable and were approved by the Los Angeles Milk Industry Board and by the Secretary.

(21) That a small quantity of Grade B milk was handled by the surplus plant; that in the handling of said milk no loss was incurred and that the income from Grade B milk resulting from the sale of butter, powdered skim and other manufactured products arising therefrom more than offset the price paid for Grade B Milk and the manufacture thereof.

(22) That the Los Angeles Milk Industry Board is audited monthly by Martin J. Masters, certified public accountant, Los Angeles, California, which audits indicate that the items of expense incurred by said Board were proper in effectuating the purposes and principles embodied in License No. 17.

(23) That said licensee, its officers, employees and agents in the State of California at divers times since November 20, 1933, has violated Article III, Section 1 of said License under License No. 17 by purchasing fluid milk for distribution under terms and conditions other than those set forth in Exhibit A of said License.

(24) That the respondent failed to file, prior to the 5th day of each month, with the Chairman of the Los Angeles Milk Industry Board, a statement of (a) the

quantity of milk purchased from each producer; (b) the quantity produced and sold as fluid milk, as provided for by Paragraph 4 (a) of Article III of said license.

(25) That, pursuant to Paragraph 4 (b) of said license, the Los Angeles Milk Industry Board made a determination that distributors be billed at the rate of $\frac{1}{4}c$ per pound butterfat contained in the milk purchased by distributors and $\frac{1}{4}c$ per pound butterfat for all milk distributed.

(26) That the respondent purchased fluid milk, for distribution as Grade A market milk, from producers without obtaining the authorization of such producers to pay over to the Los Angeles Milk Industry Board amounts of $\frac{1}{4}c$ for each pound of butterfat contained in said milk purchased by the respondent, determined by said board to be payable to it, and failed and refused to pay over to said Board said amounts and also an additional amount of $\frac{1}{4}c$ for each pound of butterfat contained in milk produced by it.

(27) That the respondent was billed monthly for the above amounts determined by the Los Angeles Milk Industry Board to be due under Paragraph 4 (b) of Article III of said license, and subsequently corrected billings with respect to the foregoing periods were sent to the respondent in respect of the amounts determined by the Los Angeles Milk Industry Board to be due under Paragraph 4 (b) of Article III of said license.

(28) That the respondent failed to pay over to the Los Angeles Milk Industry Board the amount of $\frac{1}{4}c$, as a distributor, for each pound of butterfat contained in

the milk distributed by said respondent, as provided by Paragraph 4 (b) of Article III of said license.

(29) That, pursuant to provisions of Paragraph 4 (c) of Article III of said license, the Los Angeles Milk Industry Board made a determination each month of the average amount of the deductions which the members of the associations therein named authorized the distributors to pay over to such associations in behalf of their respective members, for the purpose of determining an amount to be paid equal to said average by producers not members of the associations therein named to the Los Angeles Milk Industry Board; that said determination were corrected in accordance with reports submitted to it by said associations.

(30) That the said respondent purchased milk for distribution as Grade A Market milk from producers not members of the associations therein named without obtaining the authorization of such producers to pay over to the Los Angeles Milk Industry Board the amounts determined by the Los Angeles Milk Industry Board under Paragraph 4 (c) as due and payable to it.

(31) That the said respondent was billed monthly for the amounts determined to be due by the Los Angeles Milk Industry Board under Paragraph 4 (c) of Article III of said license; and later was furnished with corrected billings with respect to said amounts; that the respondent failed to pay over to the Los Angeles Milk Industry Board said corrected amounts so determined by said Board to be payable to it.

(32) That the respondent has failed to pay and has not paid to the Los Angeles Milk Industry Board the

deductions required in accordance with the provisions of Paragraph 4 (b) and Paragraph 4 (c) of Article III of said License which payments were required to be made at the time for making payments to producers for milk purchased pursuant to Paragraph 4 (d) of said License No. 17.

(33) That the respondent purchased milk for distribution as Grade A Market Milk from the producers who were not members of the associations listed in Paragraph 4 of Article III of said license and that the respondent did not and has not secured the authorization of such producers to deduct as surplus deductions each month the amounts required to be deducted in accordance with the provisions of Paragraph 5 (b) of Article III of said license.

(34) That the Los Angeles Milk Industry Board made a determination of the amounts due and payable to the Milk Producers, Inc., as surplus deductions.

(35) That the respondent was billed monthly for the amounts determined to be payable as surplus deductions to Milk Producers, Inc., as provided for by Paragraph 5 (b) and Paragraph 5 (c) of Article III of said License and that subsequently corrected billings were sent to the respondent with respect to the amounts due and payable as surplus deductions to Milk Producers, Inc., successor to Producers Arbitration Committee, Inc.

(36) That the respondent failed to pay the sums estimated as surplus deductions to Milk Producers, Inc., successors to Producers Arbitration Committee, Inc., for each month, as provided for by Paragraph 5 (b) and

Paragraph 5 (c) of Article III and Exhibit C of said license.

(37) That the failure by the respondent to comply with each and all of the aforesaid provisions of License No. 17 constitutes a violation of the respective provisions of said License No. 17 and also constitutes a violation of Paragraph 4, Section 7, Article II of License No. 57, License for Milk—Los Angeles, California, Sales Area.

CONCLUSION

Based upon the foregoing Findings of Fact I hereby determine and conclude that the facts and circumstances proved in this case establish and prove the charges Nos. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 13, 15 and 16 of the said Order to Show Cause and prove the violations by the respondent of License No. 17, as charged therein, and therefore establish and prove violation by the respondent of Article II, Section 7, Paragraph 4 of License No. 57, as charged in the amendment to the Order to Show Cause.

I further determine that any one of said violations of License No. 17 so established and proved warrants independently the revocation of the license of the respondent under License No. 57.

ORDER

The Secretary of Agriculture hereby issues the following Order:

IT IS HEREBY ORDERED that the License of Valley Dairy Co., Inc., a California corporation, under License No. 57, License for Milk, Los Angeles, California, Sales Area, be and it is hereby revoked.

IT IS FURTHER ORDERED that this Order shall become effective on and after 6:00 P.M., Pacific Time on the 28th day of July, 1934.

IT IS FURTHER ORDERED that a copy of this order be served on the VALLEY DAIRY COMPANY, INC. by depositing the same in the United States mail registered and addressed to Valley Dairy Company, Inc. of Glendale, California at its last known address, to wit: 2401 Fletcher Drive, Glendale, California.

IN WITNESS WHEREOF I have hereunto set my hand and caused the official seal of the Department of Agriculture to be affixed hereto in the City of Washington, District of Columbia, this 28th day of July, 1934.

(SEAL)

(Signed) H. A. WALLACE
Secretary of Agriculture.

EXHIBIT "G"

UNITED STATES DEPARTMENT OF AGRICULTURE
AGRICULTURAL ADJUSTMENT ADMINISTRATION
WASHINGTON, D. C.

I, James K. Knudson, Acting Chief Hearing Clerk of the United States Department of Agriculture, Agricultural Adjustment Administration, pursuant to General Regulations, Series 7 thereof, do hereby certify:

1. That there has been filed in the office of the said Chief Hearing Clerk, a certain document in connection with a hearing held pursuant to Section 8 (3) of the Agricultural Adjustment Act, relating to the revocation and suspension of a certain license, to-wit:

LUCERNE CREAM AND BUTTER COMPANY,

a California corporation.

Case No. 17-1-6

which said document is now on file in the office of the Chief Hearing Clerk, and is as follows: Findings of Fact and Order of the Secretary Signed by H. A. Wallace, Secretary of Agriculture, on the 28th day of July, 1934.

2. A true and correct copy of said document is attached hereto.

WITNESS my hand and official seal this 28th day of July, A.D. 1934.

(SEAL)

JAMES K. KNUDSON,

Acting Chief Hearing Clerk United States
Department of Agriculture Agricultural
Adjustment Administration

(Signed) JOSEPH A. WALSH
Deputy Hearing Clerk

UNITED STATES DEPARTMENT OF AGRICULTURE
AGRICULTURAL ADJUSTMENT ADMINISTRATION
WASHINGTON, D. C.

IN THE MATTER OF
LUCERNE CREAM AND BUTTER
COMPANY, a California Corporation

Before the
Secretary of
Agriculture
Case No. 17-1-6

FINDINGS OF FACT AND ORDER OF THE
SECRETARY

On November 16, 1933, the Secretary of Agriculture duly issued License No. 17, License for Milk—Los Angeles Milk Shed, effective November 20, 1933, and con-

tinuously since said date the Lucerne Cream and Butter Company, a California Corporation, has been a distributor of fluid milk for consumption in the Los Angeles Sales Area and was a licensee under said License No. 17 from the effective date of said License No. 17 until the termination of said License No. 17 on May 21, 1934.

On February 21, 1934, a written order of the Secretary, as provided for in General Regulations, Series 3, Sections 200 and 201, requiring respondent to show cause on or before the 5th day of March, 1934, why its said License No. 17 should not be revoked or suspended by the Secretary, was duly served upon the respondent.

The said Order to Show Cause contained the following statements of the alleged violations of the terms and conditions of the license by the respondent:

(1) That said licensee, its officers, employees, and agents at divers times since November 20, 1933, has violated the terms and conditions of said license.

(2) That said licensee, its officers, employees, and agents at divers times since November 20, 1933, has violated Article III, Paragraph 1 of said license by purchasing fluid milk for distribution as fluid milk in the Los Angeles Sales Area at prices and under terms and conditions different from those provided for in said paragraph and as set forth in Exhibit "A" of the license.

(3) That said licensee, its officers, employees, and agents, at divers times since November 20, 1933, has violated Article III, Paragraph 3 of said license, in that it has purchased and distributed fluid milk in violation of the terms and conditions as set forth in the Produc-

tion and Surplus Control Plan provided for in Exhibit "C" of the license.

(4) That said licensee, its officers, employees, and agents, at divers times since November 20, 1933, has violated Article III, Paragraph 4 (a) of said license by failing and refusing to file reports and statements with the Chairman of the Los Angeles Milk Industry Board, as provided for in said paragraph.

(5) That said licensee, its officers, employees, and agents, at divers times since November 20, 1933, has violated Article III, Paragraph 4 (b) of said license by purchasing milk from producers for distribution as Grade "A" market milk in violation of the terms and conditions of said paragraph.

(6) That said licensee, its officers, employees, and agents, at divers times since November 20, 1933, has violated Article III, Paragraph 4 (b) of said license by purchasing milk from producers for distribution as Grade "A" market milk in violation of the terms and conditions of said paragraph in that it has purchased fluid milk for consumption in the Los Angeles Sales Area from producers without being authorized by said producers to make the deductions as provided for in said paragraph of the license and without making said deductions.

(7) That said licensee, its officers, employees, and agents, at divers times since November 20, 1933, has violated Article III, Paragraph 4 (b) of said license by failing and refusing to pay to the Los Angeles Milk Industry Board the amounts deducted from producers, as provided for in said paragraph of the license.

(8) That said licensee, its officers, employees, and agents, at divers times since November 20, 1933, has violated Article III, Paragraph 4 (b) of said license by failing and refusing to pay as a distributor to the Los Angeles Milk Industry Board the amounts therein required to be paid by it as a distributor.

(9) That said licensee, its officers, employees, and agents, at divers times since November 20, 1933, has violated Article III, Paragraph 4 (c) of said license by purchasing milk for distribution as Grade "A" market milk from producers in violation of the terms and conditions of said paragraph of said license.

(10) That said licensee, its officers, employees, and agents, at divers times since November 20, 1933, has violated Article III, Paragraph 4 (c) of said license by purchasing milk for distribution as Grade "A" market milk from producers in violation of the terms and conditions of said paragraph of said license, and by failing and refusing to make the payments to the Los Angeles Milk Industry Board, as required by said paragraph of said license.

(11) That said licensee, its officers, employees, and agents, at divers times since November 20, 1933, has violated Article III, Paragraph 4 (d) of said license by failing and refusing to comply with the terms and conditions of said paragraph of said license.

(12) That said licensee, its officers, employees, and agents, at divers times since November 20, 1933, has violated Article III, Paragraph 5 (a) of said license by failing and refusing to comply with the terms and conditions of its license, as set forth in said paragraph.

(13) That said licensee, its officers, employees, and agents, at divers times since November 20, 1933, has violated Article III, Paragraph 5 (b) of said license by failing and refusing to comply with the terms and conditions of its license, as set forth in said paragraph.

(14) That said licensee, its officers, employees, and agents, at divers times since November 20, 1933, has violated Article III, Paragraph 5 (a) and (b) of said license by purchasing milk for distribution as Grade "A" market milk in the Los Angeles Sales Area from producers who are not members of any of the associations of producers listed in Paragraph 4 of Article III of said license without authorization from such producers to deduct, or cause to be deducted by the particular association of producers, if any, of which any such producer is a member, each month, certain sums therein required to be deducted and paid to Producers' Arbitration Committee, Inc., or to its successor, Milk Producers, Inc., and without paying said sums to Milk Producers, Inc.

(15) That said licensee, its officers, employees, and agents, at divers times since November 20, 1933, has violated Article III, Paragraph 14 of said license by failing and refusing to comply with the terms and conditions of its license, as set forth in said paragraph.

In response to a telegraphic request by counsel for respondent in the above entitled case, the time for filing its answer to said Order was extended to March 10, upon the condition that the hearing be held in Los Angeles, California, on March 16, 1934. Reserving its right to object to the jurisdiction of the Secretary or to the validity of the Order to Show Cause, this condition was

agreeable to counsel for respondent, and a voluminous Answer, consisting of thirty three pages with four attached exhibits was filed within the time specified to the charges set forth in said Order to Show Cause, in accordance with General Regulations, Series 3. In said Answer the respondent, after objecting and excepting to the jurisdiction of the Secretary of Agriculture to hear or determine the issues presented in this matter, denied each and all of the allegations contained in the Order to Show Cause and alleged numerous specific grounds as matters of defense to the charges made in said order. This Answer is contained in Government Exhibit No. 1 which was submitted for the record made at the hearing.

A hearing was held on March 16, 1934, at 10 o'clock A.M., in the Assembly Room of the California State Building, Los Angeles, California, in accordance with the order of the Secretary, and as agreed to by counsel for the respondents, before Arthur P. Curran, Esq., Presiding Officer, an officer and employee of the United States Department of Agriculture, duly designated and appointed by the Secretary. The respondent appeared and was represented by attorneys Edward M. Selby and William T. Selby. The Secretary of Agriculture was represented by C. P. Dorr, Esq., and A. D. Hadley, Esq., of Washington, D. C.

It was stipulated at the hearing by counsel for all parties that the above entitled case be consolidated with the cases of Charles J. Kurtz, Valley Dairy Company, and Western Holstein Farms, Inc. for the purpose of the trial, and that in determination of each case, the

testimony applicable to all four cases, as well as the testimony pertaining to that particular case, should be considered.

At the outset, counsel for respondent raised certain objections to the jurisdiction of the Secretary to try the issues raised by the Order to Show Cause and the Answer, which objections were overruled. Various motions to dismiss the proceedings based on lack of jurisdiction were also offered by counsel for respondent. After extended argument by both counsel for respondent and counsel for the Government, and upon consideration of the authorities submitted, the various motions to dismiss were denied. At said hearing, after objecting to the introduction of any and all of the testimony to be introduced by counsel for the Secretary, counsel for the respondent participated fully in the proceedings and cross-examined fully the witnesses produced on behalf of the Secretary.

After ten full days consumed in the taking of testimony, on April 12, 1934, by agreement of counsel representing all parties, the hearing was adjourned until such time as the audit being made of the Los Angeles Milk Industry Board and Milk Producers, Inc., by representatives of the Comptroller of the Department of Agriculture, was completed. It was stipulated that the audit should be received in evidence at an adjourned hearing to be held in Washington in lieu of further cross-examination of Mr. Evans, Accountant for the Milk Producers, Inc., and that this audit should be considered by the Secretary in arriving at his final determinations with respect to the issues raised herein. How-

ever, it was further agreed that the respondents were to have the privilege to present such additional evidence as might come to their attention during the adjournment. Counsel for the respondent submitted to the auditors a statement of the various contentions for their consideration in completing the audit. The auditors considered these various contentions in making their audit and the audit was completed as agreed and copies furnished to the parties herein.

On May 31, 1934, the Secretary terminated License No. 17, License for Milk—Los Angeles Milk Shed, effective on and after 12:01 A.M., Eastern Standard Time, June 1, 1934. In said order of termination it was provided that “any and all obligations which have arisen, or which may hereafter arise in connection therewith, by virtue of, or pursuant to, such license, shall be deemed not to be affected, waived, or terminated hereby.”

On May 31, 1934, the Secretary duly issued License No. 57, License for Milk—Los Angeles, California, Sales Area, effective June 1, 1934, and continuously since said date the Lucerne Cream and Butter Company, a California corporation, has been engaged in the business of distributing, marketing, or handling milk or cream as a distributor in the Los Angeles Sales Area and is a licensee duly licensed under said License No. 57. In Paragraph 4, Section 7, Article II, of said License No. 57 it was provided that: “Each and every distributor shall fulfill any and all of his obligations which shall have arisen or which may hereafter arise in connection with, by virtue of, or pursuant to, the License for Milk in the Los Angeles Sales Area issued by the Secretary on November 16, 1933”.

Pursuant to notice duly served upon the respondents, and in accordance with the agreement entered into by the parties on April 12, 1934, the matter came on for further hearing on June 14, 1934, at Washington, D. C. Counsel for the respondents and counsel for the Government appeared at said adjourned hearing at the time and place specified in said notice. At the hearing, the audits, completed by the auditors of the Department of Agriculture, were introduced in evidence. After objecting to the introduction of the audits, which objections were overruled, counsel for the respondents examined Mr. Manley, under whose supervision the audits were made, with respect to various matters contained in the afore-said audits.

On June 18, 1934, at the adjourned hearing, counsel for the Secretary moved to amend the Order to Show Cause, issued in the above entitled case, charging the respondent with failure to fulfill its obligations under the prior License No. 17, as provided for by Paragraph 4, Section 7, Article II of License No. 57, License for Milk—Los Angeles, California, Sales Area, and in connection therewith offered for the record the order of the Secretary terminating License No. 17 and a certified copy of the new License No. 57. The order of the Secretary terminating License No. 17 was admitted in evidence without objection. Subject to respondent's objection, the Presiding Officer granted leave to counsel for the Government to amend the Order to Show Cause and received in evidence Government Exhibit No. 51 which was a certified copy of License No. 57. The amendment to the Order to Show Cause was presented by counsel for the Secretary and incorporated in the Record. There-

upon, counsel for the respondent refused to participate further in the case and, waiving oral argument upon the record as thus made, asked permission to file a brief with respect to the propriety of the granting of the motion to amend said Order to Show Cause. The permission was granted and counsel for the respondent thereupon withdrew from the hearing.

The fullest opportunity to be heard and produce evidence bearing upon the issues presented was afforded to the Secretary and to the respondent and both said parties were fully heard. At the close of the hearing neither counsel for the respondent nor for Government made any argument but were content to have the decision arrived at upon the record as made and brief filed therein. The hearing consumed twelve full days.

Thereafter the Presiding Officer made Findings of Fact and a Recommendation and reported the Same to the Secretary together with the record of the proceedings including the Order to Show Cause, Answer, stenographic report of all the oral testimony and all the documentary evidence offered and received, and a brief filed by the respondent with a transcript of all testimony and documentary evidence offered and received in the aforesaid four consolidated cases, and the briefs filed therein.

Upon the record thus made, the Secretary of Agriculture in addition to the foregoing, makes the following Specific Findings of Fact:

(1) That the respondent, Lucerne Cream and Butter Company, is a California corporation whose address is 4300 South Alameda St., Vernon, California.

(2) That the respondent purchases fluid milk from producers in the Los Angeles Milk Shed and distributes said milk for consumption as fluid milk in the Los Angeles Sales Area.

(3) That the respondent, since the effective date of License No. 17 and prior thereto, including the period described in the license as the "production base period", has been engaged in distributing fluid milk for consumption in the Los Angeles Sales Area and was a licensee duly licensed under License No. 17 from the effective date of said License No. 17, November 20, 1933, until the termination of said License on May 31, 1934.

(4) That the respondent, since the effective date of License No. 57, has been and is in the business of distributing, marketing and handling milk and cream as a distributor in the Los Angeles Sales Area and is a licensee duly licensed under License No. 57.

(5) That in the marketing of fluid milk produced in the Los Angeles Milk Shed and in the distribution of said fluid milk in the Los Angeles Sales Area, both interstate and intrastate commerce are so inextricably intermingled that said marketing and distribution of fluid milk in the Los Angeles Sales Area are in the current of interstate commerce. And further that intrastate commerce in such marketing and distribution of fluid milk in the Los Angeles Sales Area affects, burdens, and competes with interstate commerce in such marketing and distribution of fluid milk and of milk products in such a manner as to bring the distribution and marketing of fluid milk within said area in the current of interstate commerce and under the power of regulation vested

in the Secretary of Agriculture by the Agricultural Adjustment Act, and the business of the respondent in the marketing and distribution of fluid milk within said area is such as to bring it within the said current of interstate commerce.

(6) That certain producers from whom the respondent purchased fluid milk did, at various times during the period covered by License No. 17, ship fluid milk to the surplus plant operated by Milk Producers, Inc., which is successor to Producers Arbitration Committee, Inc., as provided for in said License No. 17.

(7) That large quantities of the butter, cheese and other dairy products manufactured at the surplus plant operated by Milk Producers, Inc., which is successor to Producers Arbitration Committee, Inc., from milk delivered to said plant by producers within the said area, were shipped in interstate commerce.

(8) That the Los Angeles Milk Industry Board was duly organized in accordance with the terms of said License No. 17; that the said Board was composed of thirteen members who were properly selected in accordance with the provisions of Exhibit D of said license, all of which appointments to said Board were approved by the Secretary, as provided for in said license.

(9) That the said Los Angeles Milk Industry Board has functioned continuously since its creation in the performance of its duties, as set forth in said License No. 17.

(10) That the said Los Angeles Milk Industry Board, in accordance with the provisions of Exhibit D of the said License, made certain arrangements to determine

under the provisions of Paragraph 9 of Exhibit C of said License No. 17 whether the daily average quantity of milk sold for consumption as whole milk in the Los Angeles Sales Area has become so decreased as to render impractical in its opinion the accounting for such variations through adjustments in the base price paid producers.

(11) That pursuant to Paragraph 9 of Exhibit C of License No. 17, the Los Angeles Milk Industry Board determined that the daily average quantity of milk sold for consumption in the Los Angeles Sales Area had become so decreased as to render impractical the accounting for such variations through adjustments in the base price as provided for in Paragraph 4, Schedule "C", "Establishment of Adjusted Base Price".

(12) That pursuant to Paragraph 9 of Exhibit C of License No. 17, Milk Producers, Inc., successor to Producers Arbitration Committee, Inc., made certain uniform decreases for each month in all existing established bases of producers to the end that the sum total of all bases adjusted would again approximate in amount the daily average quantity of milk sold for consumption as whole milk in the Los Angeles Sales Area.

(13) That the various percentages of scale downs in existing established bases of producers by said Milk Producers, Inc., successor to Producers Arbitration Committee, Inc., for the respective periods were approved by the Los Angeles Milk Industry Board and by the Secretary, as provided by Paragraph 9 of Exhibit C of License No. 17—"Establishment of Adjusted Base Price".

(14) That the existing established base of each producer was determined by Milk Producers, Inc., successor to Producers Arbitration Committee, Inc., on the basis of deliveries of producers during the base period March 16, 1933, to June 15, 1933, both dates inclusive, ascertained from reports of distributors, which include producer-distributors, covering deliveries to them or milk produced by them for this period. The total deliveries of each producer divided by the number of days in the base period established the producer's general daily average base. This general daily average base was scaled down pursuant to Paragraph 9 of Exhibit C of License No. 17 to arrive at an adjusted basic average for each producer for the period. The resultant total was the quantity that the producer was to deliver or sell as base milk. Milk delivered or sold in excess of this monthly base was treated as surplus milk.

(15) That Milk Producers, Inc., successor to Producers Arbitration Committee, Inc., was operating the surplus plant, as provided for in Exhibit C of said License, accounting to producers delivering milk to it for the full base price as set forth in said License in respect of deliveries not in excess of the individual producer's adjusted base as determined above, and for the surplus price in respect of deliveries in excess of producer's adjusted base.

(16) That the amounts determined by Milk Producers, Inc., successor to Producers Arbitration Committee, Inc., to be due and payable to it by distributors in the Los Angeles Sales Area including the respondent as surplus deductions, represented the difference between

the base price and the surplus price for the various periods here under consideration as provided in said License No. 17 and were approved by the Los Angeles Milk Industry Board.

(17) That operating statements for the periods November 20, 1933, to November 30, 1933, December, 1933, January, 1934, and February, 1934, were prepared from the books and records of Milk Producers Inc., successor to Producers Arbitration Committee, Inc., which statements reflect the recorded transactions for the above named periods and reveal a loss attributable to the operation of the surplus plant for the periods above set forth.

(18) That the operating charges incurred by the surplus plant operated by Milk Producers, Inc., successor to Producers Arbitration Committee, Inc., were approved by the proper authorities and represent reasonable items of expense.

(19) That a charge of 1c per pound of butterfat was set up for the month of December, 1933, through adjustment of the base price for that period with respect to working capital and that the methods adopted by Milk Producers, Inc., successor to Producers Arbitration Committee, Inc., in arriving at the amounts to be charged to working capital were ratified and approved by the Los Angeles Milk Industry Board, as provided by Paragraphs 7 and 8 of Exhibit C—"Establishment of Adjusted Base Price", of said License No. 17.

(20) That the methods adopted by Milk Producers, Inc., successor to Producers Arbitration Committee, Inc., in arriving at surplus deductions were reasonable and

were approved by the Los Angeles Milk Industry Board and by the Secretary.

(21) That a small quantity of Grade B milk was handled by the surplus plant; that in the handling of said milk no loss was incurred and that the income from Grade B milk resulting from the sale of butter, powdered skim and other manufactured products arising therefrom more than offset the price paid for Grade B milk and the manufacture thereof.

(22) That the Los Angeles Milk Industry Board is audited monthly by Martin J. Masters, certified public accountant, Los Angeles, California, which audits indicate that the items of expense incurred by said Board were proper in effectuating the purposes and principles embodied in License No. 17.

(23) That said licensee, its officers, employees and agents in the State of California at divers times since November 20, 1933, has violated Article III, Section 1 of said License under License No. 17 by purchasing fluid milk for distribution under terms and conditions other than those set forth in Exhibit A of said License.

(24) That the respondent failed to file, prior to the 5th day of each month, with the Chairman of the Los Angeles Milk Industry Board, a statement of the quantity of milk purchased from each producer, as provided for by Paragraph 4 (a) of Article III of said license.

(25) That, pursuant to Paragraph 4 (b) of said license, the Los Angeles Milk Industry Board made a determination that distributors be billed at the rate of $\frac{1}{4}c$ per pound butterfat contained in the milk purchased

by distributors and $\frac{1}{4}c$ per pound butterfat for all milk distributed.

(26) That the respondent purchased fluid milk, for distribution as Grade A market milk, from producers without obtaining the authorization of such producers to pay over to the Los Angeles Milk Industry Board amounts of $\frac{1}{4}c$ for each pound of butterfat contained in said milk purchased by the respondent, determined by said board to be payable to it, and failed and refused to pay over said amounts to said Board.

(27) That the respondent was billed monthly for the above amounts determined by the Los Angeles Milk Industry Board to be due under Paragraph 4 (b) of Article III of said license, and subsequently corrected billings with respect to the foregoing periods were sent to the respondent in respect of the amounts determined by the Los Angeles Milk Industry Board to be due under Paragraph 4 (b) of Article III of said License.

(28) That the respondent failed to pay over to the Los Angeles Milk Industry Board the amount of $\frac{1}{4}c$, as a distributor, for each pound of butterfat contained in the milk distributed by said respondent, as provided by Paragraph 4 (b) of Article III of said License.

(29) That, pursuant to provisions of Paragraph 4 (c) of Article III of said license, the Los Angeles Milk Industry Board made a determination each month of the average amount of the deductions which the members of the associations therein named authorized the distributors to pay over to such associations in behalf of their respective members, for the purpose of determining an amount to be paid equal to said average by producers not mem-

bers of the associations therein named to the Los Angeles Milk Industry Board; that said determinations were corrected in accordance with reports submitted to it by said associations.

(30) That the said respondent purchased milk for distribution as Grade A market milk from producers not members of the associations therein named without obtaining the authorization of such producers to pay over to the Los Angeles Milk Industry Board the amounts determined by the Los Angeles Milk Industry Board under Paragraph 4 (c) as due and payable to it.

(31) That the said respondent was billed monthly for the amounts determined to be due by the Los Angeles Milk Industry Board under Paragraph 4 (c) of Article III of said license; and later was furnished with corrected billings with respect to said amounts; that the respondent failed to pay over to the Los Angeles Milk Industry Board said corrected amounts so determined by said Board to be payable to it.

(32) That the respondent has failed to pay and has not paid to the Los Angeles Milk Industry Board the deductions required in accordance with the provisions of Paragraph 4 (b) and Paragraph 4 (c) of Article III of said License which payments were required to be made at the time for making payments to producers for milk purchased pursuant to Paragraph 4 (d) of said License No. 17.

(33) That the respondent purchased milk for distribution as Grade A Market Milk from the producers who were not members of the Associations listed in Paragraph 4 of said license and that the respondent did not and has

not secured the authorization of such producers to deduct as surplus deductions each month the amounts required to be deducted in accordance with the provisions of Paragraph 5 (b) of Article III of said License.

(34) That the Los Angeles Milk Industry Board made a determination of the amounts due and payable to the Milk Producers, Inc., as surplus deductions.

(35) That the respondent was billed monthly for the amounts determined to be payable as surplus deductions to Milk Producers, Inc., as provided for by Paragraph 5 (b) of Article III of said License, and that subsequently corrected billings were sent to the respondent with respect to the amounts due and payable as surplus deductions to Milk Producers, Inc., successor to Producers Arbitration Committee, Inc.

(36) That the respondent failed to pay the sums estimated as surplus deductions to Milk Producers, Inc., successor to Producers Arbitration Committee, Inc., for each month, as provided for by Paragraph 5 (b) of Article III and Exhibit C of said license.

(37) That the failure by the respondent to comply with each and all of the aforesaid provisions of License No. 17 constitutes a violation of the respective provisions of said License No. 17 and also constitutes a violation of Paragraph 4, Section 7, Article II of License No. 57, License for Milk—Los Angeles, California, Sales Area.

CONCLUSION

Based upon the foregoing Findings of Fact I hereby determine and conclude that the facts and circumstances proved in this case establish and prove the charges Nos. (1), (2), (3), (4), (5), (6), (7), (8), (9), (10),

(11) and (13) of the said Order to Show Cause, and they prove the violations by the respondent of License No. 17, as charged therein, and, therefore, establish and prove violation by the respondent of Article II, Section 7, Paragraph 4 of License No. 57 as charged in the amendment to the Order to Show Cause.

I further determine that any one of said violations of License No. 17 so established and proved warrants independently the revocation of the license of the respondent under License No. 57.

ORDER

The Secretary of Agriculture hereby issues the following Order:

IT IS HEREBY ORDERED that the License of LUCERNE CREAM AND BUTTER COMPANY, a California Corporation, under License No. 57, License for Milk, Los Angeles, California, Sales Area, be and it is hereby revoked.

IT IS FURTHER ORDERED that this Order shall become effective on and after 6:00 P.M., Pacific Time on the 28th day of July, 1934.

IT IS FURTHER ORDERED that a copy of this order be served on the Lucerne Cream and Butter Company of Los Angeles, California, by depositing the same in the United States mail registered and addressed to Lucerne Cream and Butter Company, Los Angeles, California at its last known address, to-wit: 1925 East Vernon Ave., Los Angeles, California.

IN TESTIMONY WHEREOF, I have hereunto set my hand and caused the official seal of the Department of Agriculture to be affixed

in the City of Washigton, this 28th day
of July, 1934.

(SEAL)

(Signed) H. A. WALLACE
Secretary of Agriculture.

(Endorsed). Supplemental Bill of Complaint for In-
junction. Filed Sep 4 1934. R. S. Zimmerman, Clerk.
By Francis E. Cross, Deputy Clerk.

(Lewis D. Collings, Edward M. Selby, Walter F.
Haas, Harold C. Johnston, Attorneys for Plaintiffs.)

IN THE DISTRICT COURT OF THE UNITED
STATES, SOUTHERN DISTRICT OF
CALIFORNIA, CENTRAL DIVISION

CHARLES J. KURTZ, doing business as Golden
West Creamery Company, WESTERN HOL-
STEIN FARMS, INC., a corporation, VALLEY
DAIRY Co., INC., a corporation, THE LUCERNE
CREAM & BUTTER COMPANY, a corporation.
Plaintiffs,

vs.

HARRY W. BERDIE, LOS ANGELES MILK INDUS-
TRY BOARD, MILK PRODUCERS, INC., a Cali-
fornia corporation, RICHARD CRONSHEY,
WILLIAM CORBETT, DAVID P. HOWELLS,
GEORGE A. CAMERON, F. A. LUCAS, EARL
MAHARG, A. G. MARCUS, M. H. ADAMSON,
T. E. DAY, W. H. STABLER, MAX BUECHERT,
C. W. HIBBERT, W. J. KUHRT, GEORGE E.
PLATT, A. M. McOMIE, T. H. BRICE, T. M.
ERWIN, A. R. READ, R. C. PERKINS, ROSS
WEAVER, ANDERS LARSEN, H. C. DARGER,
PIERSON M. HALL, as United States District

Attorney for the Southern District of California, JOHN FOUR, JOHN FIVE, JOHN SIX, JOHN SEVEN, JOHN EIGHT, JOHN NINE, JOHN TEN, JOHN ONE COMPANY, a co-partnership, JOHN TWO COMPANY, a co-partnership, JOHN THREE COMPANY, a co-partnership, JOHN ONE COMPANY, a corporation, JOHN TWO COMPANY, a corporation, JOHN THREE COMPANY, a corporation,
Defendants.

In Equity No. 144-C

ORDER TO SHOW CAUSE AND RESTRAINING ORDER.

On reading the motion to file the supplemental bill in equity of plaintiffs herein, and upon consideration of the verified supplemental bill of complaint for injunction attached to said motion, and good cause appearing therefor,

IT IS HEREBY ORDERED that the defendants above named, and each of them, be and appear before the Honorable George Cosgrave, Judge, in the court room at room No. 422 in the Federal Building, Los Angeles, California, on the 20th day of August, 1934, at the hour of ten o'clock A. M. of said day, then and there to show cause, if any they or any of them have, why a temporary injunction should not issue herein restraining and enjoining said defendants, and each of them, their agents, attorneys, successors and employees, during the pendency of this action, from

(a) Making any of the demands and committing any of the acts with relation to these plaintiffs, complained

of in the proposed supplemental complaint of plaintiffs herein; and

(b) From in any manner interfering with plaintiffs, or any of them, in the conduct of their respective business by any form of civil or criminal proceedings, or otherwise; and

(c) From enforcing or attempting to enforce, as against the plaintiffs, or any of them, any of the terms and provisions of Licenses Nos. 17 and 57 of the United States Department of Agriculture, Agricultural Adjustment Administration, Los Angeles, California, Sales Area; and

(d) From collecting or attempting to collect from plaintiffs, or any of them, any of the sums of money demanded by defendants, or any of them, under the terms and provisions of said Licenses Nos. 17 and 57, either by civil or criminal proceedings, or otherwise, or from commencing, prosecuting or maintaining any action against any of the plaintiffs for the collection of any of said sums, or from taking any action against the said plaintiffs, or any of them, by any form of civil or criminal proceeding, or otherwise, to enforce any penalty or penalties prescribed in the National Agricultural Adjustment Act, or in any rules or regulations purported to have been issued thereunder by the Secretary of Agriculture;

AND PENDING THE HEARING OF THIS ORDER TO SHOW CAUSE AND UNTIL THE FURTHER ORDER OF THIS COURT the said defendants, and each of them, their agents, attorneys, successors and employees, are hereby restrained from

(a) Making any of the demands or committing any of the acts with relation to these plaintiffs, or any of them, as set forth in the proposed supplemental bill of complaint of plaintiffs herein;

(b) From in any manner interfering with plaintiffs, or any of them, in the conduct of their respective businesses by any form of civil or criminal proceeding, or otherwise;

(c) From enforcing or attempting to enforce, as against the plaintiffs or any of them, any of the terms and/or provisions of Licenses No. 17 and No. 57 of the United States Department of Agriculture, Agricultural Adjustment Administration, Los Angeles, California Sales Area;

(d) From collecting or attempting to collect from plaintiffs, or any of them, any of the sums of money demanded under the terms and provisions of said Licenses No. 17 and No. 57, as in said proposed supplemental bill set forth, either by civil or criminal proceedings, or otherwise;

(e) From commencing, prosecuting or maintaining any action against any of the plaintiffs for the collection of any of said sums, or from taking any action against the said plaintiffs, or any of them, by any form of civil or criminal proceedings, or otherwise, to enforce any penalty or penalties prescribed in the National Agricultural Adjustment Act, or in any rules or regulations purported to be issued thereunder by the Secretary of Agriculture.

Done in open court this 9th day of August, 1934.

GEO. COSGRAVE

Judge.

Filed Aug 9 1934 R. S. Zimmerman Clerk By L. Wayne Thomas Deputy Clerk

IN THE DISTRICT COURT OF THE UNITED
STATES, SOUTHERN DISTRICT OF
CALIFORNIA, CENTRAL DIVISION

CHARLES W. KURTZ, et al,
Plaintiffs,

vs.

HARRY W. BERDIE, et al,
Defendants.

In Equity No. 144-C

NOTICE OF MOTION TO DISMISS PROCEEDING

To the plaintiffs Charles J. Kurtz, doing business as Golden West Creamery Company; Western Holstein Farms, Inc., a corporation; Valley Dairy Co., Inc., a corporation; The Lucerne Cream & Butter Company, a corporation; and to: Lewis D. Collings, Amos Friedman, Walter F. Haas, Harold C. Johnston, Edward M. Selby, and William Selby, their attorneys:

YOU AND EACH OF YOU WILL TAKE NOTICE that the defendants Los Angeles Milk Industry Board, Richard Cronshey, William Corbett, David P. Howells, George A. Cameron, F. A. Lucas, Earl Maharg, A. G. Marcus, M. H. Adamson, T. E. Day, W. H. Stabler, Max Buechert, C. W. Hibbert, W. J. Kuhrt, George E. Platt, A. M. McOmie, T. H. Brice, T. M. Irwin, A. R. Read, R. C. Perkins, and Ross Weaver, for themselves alone

and severing from their codefendants herein, will move the above entitled court in the Department of the Hon. Geo. Cosgrave, on Tuesday, the 4th day of September, 1934, at the hour of 10 o'clock A. M. for an order of said court dismissing the above entitled proceeding.

Said motion will be based upon the pleadings, records, and files in said action, and upon the affidavits of W. J. Kuhrt, O. R. Fuller, and Earl Maharg, attached to said motion and made a part thereof, and upon the grounds stated in said motion, a copy of which motion is herewith served upon you.

E. H. WHITCOMBE

E. H. Whitcombe

FARRAND & SLOSSON

By Leonard B. Slosson

Attorneys for defendants appearing herein

IN THE DISTRICT COURT OF THE UNITED
STATES, SOUTHERN DISTRICT OF
CALIFORNIA, CENTRAL DIVISION

CHARLES W. KURTZ, et al,
Plaintiffs,

vs.

HARRY W. BERDIE, et al,
Defendants.

In Equity No. 144-C

MOTION TO DISMISS PROCEEDING

Now come the defendants Los Angeles Milk Industry Board, Richard Cronshey, William Corbett, David P. Howells, George A. Cameron, F. A. Lucas, Earl Maharg, A. G. Marcus, M. H. Adamson, T. E. Day, W. J.

Stabler, Max Beuchert, C. W. Hibbert, W. J. Kuhrt, George E. Platt, A. M. McOmie, T. H. Brice, T. M. Irwin, A. R. Read, R. C. Perkins, and Ross Weaver, appearing for themselves alone and severing from their codefendants herein and upon the pleadings, records, and files in said action and upon the affidavits of W. J. Kuhrt, O. R. Fuller, and Earl Maharg hereto attached and made a part hereof, and five days notice of this motion having been given to Lewis D. Collings, Amos Friedman, Walter F. Haas, Harold C. Johnston, Edward M. Selby, and William T. Selby, attorneys for the plaintiff herein, move the court for an order dismissing the above entitled action upon the following grounds;

I.

That the Hon. Henry A. Wallace, Secretary of the Department of Agriculture of the United States is a necessary and indispensable party-defendant to said action, but is not named as such in the proposed supplemental bill of complaint for injunction.

II.

That the License #17 upon which said proposed amended bill of complaint for injunction purports to state a cause of action was on the 1st day of June, 1934, terminated by the Secretary of Agriculture of the United States and the same is no longer in force or effect; that license #57 upon which said supplemental bill of complaint for injunction is also based contains no provision authorizing the existence of the defendant Los Angeles Milk Industry Board and that any and all questions involved therein are moot and can raise no issue.

III.

That none of the plaintiffs are now engaged in business but that prior to the filing of the motion for leave to file supplemental bill for injunction, and prior to the issuance of the temporary restraining order herein, each, every, and all of said plaintiffs, transferred to other individuals or corporations all of their assets, and hence cannot suffer any irreparable injury or damage whatsoever.

IV.

That the record herein fails to disclose any basis upon which the plaintiffs are entitled to any equitable relief.

WHEREFORE the defendants appearing herein pray that this honorable court issue an order dismissing the above entitled action and that the defendants may go hence with their costs incurred herein, and for such other and further relief as to this court may seem just and meet.

E. H. WHITCOMBE

E. H. Whitcombe

FARRAND & SLOSSON

By Leonard B. Slosson

Attorneys for defendants appearing herein

(Endorsed): Filed Aug. 28, 1934. R. S. Zimmerman,
Clerk. By L. Wayne Thomas, Deputy Clerk.

IN THE DISTRICT COURT OF THE UNITED
STATES IN AND FOR THE SOUTHERN
DISTRICT OF CALIFORNIA
CENTRAL DIVISION

CHARLES W. KURTZ, et al,
Plaintiffs,

vs.

HARRY W. BERDIE, et al,
Defendants.

No. 144-C, Equity

NOTICE OF MOTION TO DISMISS
PROCEEDINGS

To the Plaintiffs: Charles J. Kurtz, doing business as Golden West Creamery Company; Western Holstein Farms, Inc., a corporation; Valley Dairy Co., Inc., a corporation; The Lucerne Cream & Butter Company, a corporation; and to: Lewis D. Collings, Amos Friedman, Walter F. Haas, Harold C. Johnston, Edward M. Selby, and William Selby, their attorneys:

You and each of you will please take notice that the defendant Harry W. Berdie for himself alone and severing from his co-defendants herein, will move the above entitled court in the department of the Honorable George Cosgrave, on Tuesday the 4th day of September, 1934, at the hour of ten o'clock A. M., for an order dismissing the above entitled proceedings.

Said motion will be based on the pleadings, records and files in the said action, on the affidavit of Harry W. Berdie, attached to said motion and made a part thereof,

upon the grounds stated in said motion, and upon the Points and Authorities attached to said motion and made a part thereof, a copy of which motion is herewith served upon you.

PEIRSON M. HALL,
Peirson M. Hall
United States Attorney,
CLYDE THOMAS,
Clyde Thomas
Assistant United States Attorney.

DATED: THIS 29th day of August, 1934.

IN THE DISTRICT COURT OF THE UNITED
STATES IN AND FOR THE SOUTHERN
DISTRICT OF CALIFORNIA
CENTRAL DIVISION

CHARLES W. KURTZ, et al,
Plaintiffs,

vs.

HARRY W. BERDIE, et al,
Defendants.

No. 144-C, Equity

MOTION TO DISMISS PROCEEDINGS

COMES NOW the defendant Harry W. Berdie, for himself and alone, and severing from his co-defendants herein, and upon the pleadings, records and files in said action, and upon the affidavit of Harry W. Berdie, attached hereto and made a part hereof, and five days notice of this motion having been given to Lewis D.

Collings, Amos Friedman, Walter F. Haas, Harold C. Johnston, Edward M. Selby, and William Selby, attorneys for the plaintiffs herein, moves the court for an order dismissing the above entitled action upon the following grounds:

I.

That the Honorable Henry A. Wallace, Secretary of the Department of Agriculture of the United States, is a necessary and indispensable party-defendant to said action.

II.

That none of the plaintiffs are now engaged in business but that prior to the filing of the motion for leave to file supplemental bill for injunction, and prior to the issuance of the temporary restraining order herein, each, every, and all of said plaintiffs, transferred to other individuals or corporations all of their assets, and hence cannot suffer any irreparable injury or damage whatsoever.

III.

That this defendant is not and has not been since the 26th day of February, 1934, connected in any manner with the Agricultural Adjustment Administration or of the Department of Agriculture, and does not hold any official position thereunder.

WHEREFORE, the defendant Harry W. Berdie demands that this honorable court issue an order dismissing the above entitled action and that the said defendant may go hence with his costs, incurred herein, and for such

other and further relief as to this court may seem meet and just.

PEIRSON M. HALL,
Peirson M. Hall
United States Attorney,
CLYDE THOMAS,
Clyde Thomas
Assistant United States Attorney.

(Endorsed): Filed Aug. 29, 1934. R. S. Zimmerman,
Clerk. By L. Wayne Thomas, Deputy Clerk.

IN THE DISTRICT COURT OF THE UNITED
STATES, SOUTHERN DISTRICT OF
CALIFORNIA, CENTRAL DIVISION

CHARLES W. KURTZ, et al,
Plaintiffs,

vs.

HARRY W. BERDIE, et al,
Defendants.

In Equity No. 144-C

NOTICE OF MOTION TO DISMISS
PROCEEDING

To the plaintiffs Charles J. Kurtz, doing business as Golden West Creamery Company; Western Holstein Farms, Inc., a corporation; Valley Dairy Co., Inc., a corporation; The Lucerne Cream & Butter Company, a corporation; and to Lewis D. Collings, Amos Friedman, Walter F. Haas, Harold C. Johnston, Edward M. Selby, and William T. Selby, their attorneys:

YOU AND EACH OF YOU WILL PLEASE TAKE NOTICE that the defendant, Milk Producers, Inc., a California corporation, for itself alone and severing from its co-defendants herein, will move the above entitled court in the Department of the Hon. Geo. Cosgrave, on Tuesday the 4th day of September, 1934, at the hour of 10 o'clock A. M. for an order of said court dismissing the above entitled proceeding.

Said motion will be based upon the pleadings, records, and files in said action, and upon the affidavits of W. J. Kuhrt, O. R. Fuller, and Earl Maharg, attached to said motion and made a part thereof, and upon the grounds stated in said motion, a copy of which motion is herewith served upon you.

(Signed) E. H. Whitcombe
E. H. WHITCOMBE
FARRAND & SLOSSON
By Leonard B. Slosson

Attorney for Defendant Milk Producers, Inc.

IN THE DISTRICT COURT OF THE UNITED
STATES, SOUTHERN DISTRICT OF
CALIFORNIA, CENTRAL DIVISION

CHARLES J. KURTZ, et al,
Plaintiffs,

vs.

HARRY W. BERDIE, et al,
Defendants.

In Equity No. 144-C

MOTION TO DISMISS PROCEEDING

Now comes the defendant Milk Producers, Inc., a California corporation, appearing for itself alone and sever-

ing from its co-defendants herein and upon the pleadings, records, and files in said action and upon the affidavits of W. J. Kuhrt, O. R. Fuller, and Earl Maharg hereto attached and made a part hereof, and five (5) days notice of this motion having been given to Lewis D. Collings, Amos Friedman, Walter F. Haas, Harold C. Johnston, Edward M. Selby, and William T. Selby, attorneys for the plaintiffs herein, move the court for an order dismissing the above entitled action upon the following grounds:

I.

That the Hon. Henry A. Wallace, Secretary of the Department of Agriculture of the United States is a necessary and indispensable party-defendant to said action, but is not named as such in the proposed supplemental bill of complaint for injunction.

II.

That the license No. 17 upon which said proposed amended bill of complaint for injunction purports to state a cause of action was on the 1st day of June, 1934, terminated by the Secretary of Agriculture of the United States and the same is no longer in force or effect; that license No. 57 upon which said supplemental bill of complaint for injunction is also based contains no provisions authorizing the existence of the defendant Milk Producers, Inc., a California corporation, and that any and all questions involved therein are moot and can raise no issue.

III.

That none of the plaintiffs are now engaged in business but that prior to the filing of the motion for leave

to file supplemental bill for injunction, and prior to the issuance of the temporary restraining order herein, each, every, and all of said plaintiffs transferred all of their assets to other individuals or corporations, and hence cannot suffer any irreparable injury or damage whatsoever.

IV.

That the record herein fails to disclose any basis upon which the plaintiffs are entitled to any equitable relief.

WHEREFORE the defendants appearing herein pray that this honorable court issue an order dismissing the above entitled action and that the defendants may go hence with their costs incurred herein, and for such other and further relief as to this court may seem just and meet.

(Signed) E. H. Whitcombe

E. H. WHITCOMBE

FARRAND & SLOSSON

By Leonard B. Slosson (Signed)

Attorneys for Defendant Milk Producers, Inc.

(Endorsed): Filed Aug. 28, 1934. R. S. Zimmerman,
Clerk. By L. Wayne Thomas, Deputy Clerk.

IN THE DISTRICT COURT OF THE UNITED
STATES IN AND FOR THE SOUTHERN
DISTRICT OF CALIFORNIA
CENTRAL DIVISION

CHARLES J. KURTZ, et al.,
Plaintiffs,

vs.

HARRY W. BERDIE, et al.,
Defendants.

No. 144-C, Equity

OBJECTIONS TO THE APPLICATION OF PLAIN-
TIFFS FOR A PRELIMINARY INJUNCTION
AND TO THE APPLICATION FOR
LEAVE TO FILE SUPPLEMENTAL
BILL OF COMPLAINT.

NOW COMES the defendants Anders Larsen, H. C. Darger and Peirson M. Hall, and object to the application of plaintiffs herein for a preliminary injunction and for leave to file a supplemental Bill of Complaint upon the following grounds:

I.

The proposed supplemental bill and the application for temporary injunction seek only to enjoin discretionary administrative functions which it is not within the power of a court of equity to enjoin.

II.

The Bill of Complaint does not name the Secretary of Agriculture as a party-defendant but all acts charged

in the Bill of Complaint are charged as being done by him and, under the law and the regulations, he is the only person who has authority to do the things charged except as to the defendant Peirson M. Hall, as United States Attorney for the Southern District of California, who has authority to institute proper court proceedings, and it is only charged upon "information and belief" that he "intends to and will" institute proceedings to enforce the orders of the said Secretary, and to enforce the penalties of the Act. No facts whatever are alleged showing the foundation of such information and belief.

III.

The only claim for relief set forth in the said Bill of Complaint is that the Agricultural Adjustment Act and the administration thereof is unconstitutional. The plaintiffs cannot assert the unconstitutionality of such Act and such license as they now hold monies which they collected under and by virtue of the terms of the Act and the license issued thereunder. This court cannot intervene and prevent the administration of the Act for the purpose of enabling plaintiffs to hold such money.

IV.

That plaintiffs to this action have claimed and asserted that they were no longer engaged in business and only allege in the proposed supplemental complaint that they were so engaged in business prior to and including July 28, 1934, which defeats any alleged irreparable damage or cause for equity to intervene as plaintiffs could assert

all defenses to any efforts to collect any penalties or monies due from the operation of said business prior thereto.

Peirson M. Hall
PEIRSON M. HALL,
United States Attorney,
Clyde Thomas
CLYDE THOMAS,
Assistant United States Attorney.

(Endorsed): Filed Sept. 1, 1934. R. S. Zimmerman, Clerk. By L. Wayne Thomas, Deputy Clerk.

At a stated term, to wit: The February Term, A. D. 193..., of the District Court of the United States of America, within and for the Central Division of the Southern District of California, held at the Court Room thereof, in the City of Los Angeles, Calif., on Friday, the 7th day of September in the year of our Lord one thousand nine hundred and thirty-four.

Present:

The Honorable Geo. Cosgrave, District Judge.

Charles J. Kurtz, et al., Plaintiffs,

vs.

Harry W. Berdie, et al., Defendants.

No. Eq. 144-C.

This cause having come before the Court on September 4th, 1934, for hearing on Motion of defendants Los Angeles Milk Industry Board, Richard Cronshey, William Corbett, David P. Howells, Geo. A. Cameron, F. A. Lucas, Earl Maharg, A. G. Marcus, M. H. Adamson. T. E. Day, W. H. Stabler, Max Buechert, C. W. Hib-

bert, W. J. Kuhrt, Geo. E. Platt, A. M. McOmie, T. H. Brice, T. M. Irwin, A. R. Read, R. C. Perkins and Ross Weaver, for themselves alone, for an Order vacating or dissolving the Temporary Restraining Order issued on August 9th, 1934, pursuant to Notice filed August 28th, 1934; for hearing on Motion of defendants Los Angeles Milk Industry Board, Richard Cronshey, William Corbett, David P Howells, Geo. A. Cameron, F. A. Lucas, Earl Maharg, A. G. Marcus, M. H. Adamson, T. E. Day, W. H. Stabler, Max Buechert, C. W. Hibbert, W. J. Kuhrt, Geo. E. Platt, A. M. McOmie, T. H. Brice, T. M. Irwin, A. R. Read, R. C. Perkins and Ross Weaver, for themselves alone, for an Order dismissing the above entitled proceedings, pursuant to Notice filed August 28th, 1934; for hearing on Motion of defendant Milk Producers, Inc, a California corporation, for an Order vacating or dissolving the Temporary Restraining Order issued by this Court on August 9th, 1934, pursuant to Notice filed August 28th, 1934; for hearing on Motion of Milk Producers, Inc., a California corporation, for an Order dismissing the above entitled proceeding, pursuant to Notice filed August 28th, 1934; for hearing on Motion of Anders Larsen, H. C. Darger and Peirson M. Hall, for an Order vacating or dissolving the Temporary Restraining Order issued by this Court on August 9th, 1934, pursuant to Notice filed September 1st, 1934; for hearing on Objections filed September 1st, 1934, to Application of the plaintiffs for a Preliminary Injunction; and, for hearing on Order to Show Cause and Restraining Order filed August 9th, 1934, on Supplemental Bill in Equity of the plaintiffs

directed to defendants to show cause why Temporary Injunction should not issue; the Court, after having heard the argument of counsel, and thereupon ordered this cause stand submitted, and being now fully advised in the premises, orders the Motion of defendants Los Angeles Milk Industry Board, et al. for an Order vacating or dissolving the Temporary Restraining Order and the Motion of said defendants for an Order dismissing the above entitled proceedings, denied, for the reasons given in Memo of Decision filed on September 7th, 1934, in Case No. Eq.353-J, Hill, et al. vs. H. C. Darger, et al.; the Motion of Milk Producers, Inc., a California corporation, for an Order vacating or dissolving the Temporary Restraining Order, and the Motion of said defendant for an Order dismissing the above entitled proceeding, are denied for the reasons given in the said Memo of Decision, it being apparent that the District Court has acquired jurisdiction of the subject matter and that the Restraining Order may therefore properly issue; the Motion of Anders Larsen, et al. for an Order vacating or dissolving the Temporary Restraining Order, and the Objections filed September 1st, 1934, to the application of the plaintiffs for a Preliminary Injunction are likewise denied and overruled for the reasons given in the above Memorandum filed; and, the Order to Show Cause and Restraining Order, filed August 9th, 1934, on Supplemental Bill in Equity of the plaintiffs, directed to the defendants to show cause why Temporary Injunction should not issue. is granted; exception being noted for the defendants to the ruling of the Court.

[TITLE OF COURT AND CAUSE]

In Equity No. 144-C.

PRELIMINARY INJUNCTION

This cause came on to be heard on the 4th day of September, 1934, before the Honorable George Cosgrave, Judge of the above entitled Court, on the Order to Show Cause heretofore issued herein on the 9th day of August, 1934, directing the defendants and each of them to show cause, if they or any of them had, why a temporary injunction should not issue herein, restraining and enjoining said defendants and each of them, their agents, attorneys, successors and employees, during the pendency of this action, from doing any of the things, making any of the demands or committing any of the acts as set forth in said Order to Show Cause; plaintiffs appearing by their Attorneys, Lewis D. Collings, Edward M. Selby and H. C. Johnston, and the defendants, Los Angeles Milk Industry Board, Milk Producers, Inc., a California corporation, Richard Cronshey, William Corbett, David P. Howells, George A. Cameron, F. A. Lucas, Earl Maharg, A. G. Marcus, M. H. Adamson, T. E. Day, W. H. Stabler, Max Buechert, C. W. Hibbert, W. J. Kuhrt, George E. Platt, A. M. McOmie, T. H. Brice, T. M. Erwin, A. R. Reed, R. C. Perkins and Ross Weaver, appearing by their Attorneys, E. H. Whitcombe and Farrand and Slosson, and the defendants, Anders Larsen, Enforcement Officer of the Agricultural Adjustment Administration of the United States Department of Agriculture for the Los Angeles Sales Area, H. C. Darger, Market Administrator under License No. 57, License for Milk, Los Angeles, California Sales Area,

Peirson M. Hall, United States District Attorney for the Southern District of California, and Harry W. Berdie, Regional Representative of the Licensing and Enforcement Section of the Agricultural Adjustment Administration of the United States Department of Agriculture, appearing by their Attorneys, Peirson M. Hall, United States Attorney and Clyde Thomas, Assistant United States Attorney; and

The Court having read the Bill for Injunction and Supplemental Bill of Complaint for Injunction heretofore filed by the plaintiffs herein, and the affidavits filed by the defendants herein, and counter-affidavits filed by the plaintiffs herein, and having heard and considered the arguments of respective counsel, and being fully advised in the premises; and

It appearing to the Court that on the 11th day of January, 1934, the said plaintiffs filed their Bill in this Honorable Court against the defendants herein for the purpose of having the said Court adjudge and decree that the License for Milk, Los Angeles Milk Shed, License No. 17, issued by the Secretary of Agriculture of the United States on November 16, 1933, and by authority of an Act known as the National Agricultural Adjustment Act, being the Act of May 12, 1933, Chapter 25, 48 Statutes, 73rd Congress, H R 3635 of the United States of America, and regulations issued thereunder by the Secretary of Agriculture on July 22, 1933, was void and invalid as to the said plaintiffs, and that the said National Agricultural Adjustment Act, the said regulations thereunder, the operations thereof and the enforcement thereof, declared void and invalid as to these plain-

tiffs; and that since the filing of said suit and at the instance of the said defendants, the Secretary of Agriculture, purporting to act under the authority of said National Agricultural Adjustment Act, instituted proceedings to terminate said License No. 17 as to the plaintiffs and each of them for alleged violations of said License, consisting of, among other things, the failure to make payments required by said License and specified in the Bill of Complaint on file herein, and thereafter revoked said License as to all licensees, issued a new license known as No. 57, purporting to license all distributors of milk in the said Los Angeles Sales Area, among whom are the plaintiffs, and thereafter revoked said License No. 57 as to the said plaintiffs and each of them because of such alleged violations. That since the filing of said Bill of Complaint as aforesaid, the defendants, Los Angeles Milk Industry Board and the individual defendants members thereof, and the defendant Milk Producers, Inc., has demanded from the plaintiffs and each of them further payments and sums of money, claiming the same under the terms of said License No. 17, and has threatened to proceed further to attempt to collect the same from said plaintiffs and each of them, and said Milk Producers, Inc., has brought suit in the Superior Court of the State of California, against the plaintiff, Lucerne Cream and Butter Company, a corporation, for such collection thereof, and threatens to bring similar suits against the other plaintiffs and each of them, for such collection. That the said defendant, H. C. Darger, is the Market Administrator appointed by said Secretary of Agriculture under said License No. 57, and has made

demands upon the plaintiffs and each of them for payments of various sums of money under the terms and provisions of said License No. 57. That the defendant, Anders Larsen, is the Enforcement Officer of the Agricultural Adjustment Administration of the United States Department of Agriculture, appointed as such by the Secretary of Agriculture, and claims the right and power of enforcement of the provisions of said Licenses No. 17 and No. 57. That the said defendant, Peirson M. Hall, is the duly appointed, qualified and acting United States District Attorney for the Southern District of California, and the person designated by the terms and provisions of the Agricultural Adjustment Act to institute proceedings to enforce the remedies and collect the forfeitures provided for or pursuant to said Act. That each of the plaintiffs was, on and prior to July 28, 1934, engaged in the business of distributing, marketing and handling milk and cream as a distributor in the Los Angeles Sales Area; that some of the plaintiffs produced within the territory of the State of California, defined by said purported license as "Los Angeles Sales Area," a portion of the milk and cream distributed, marketed and handled by such plaintiff, and secured all other portions of the milk and cream which were distributed, marketed or handled by such plaintiffs from farmers whose farms are located wholly within the State of California and in the territory therein included within said Los Angeles Sales Area; that no part of the milk or cream distributed, marketed or handled by any of the plaintiffs herein was sold or disposed of to persons residing outside the State of California, or to any person engaged in interstate

commerce, so that such products were transported or disposed of outside the State of California. That the persons from whom said plaintiffs purchased milk and cream, and the persons to whom said plaintiffs sold milk and cream, are satisfied with and desire to continue such business; that each of the plaintiffs desires to continue to engage in the business of distributing milk and cream in said Los Angeles Sales Area, and that cancellation and revocation of the licenses of plaintiffs, if enforced, will cause the assets of plaintiffs and each of them to be deteriorated, and the good will created by plaintiffs to be destroyed, and thereby plaintiffs and each of them will be irreparably injured; now, therefore,

IT IS ORDERED, ADJUDGED AND DECREED, that the defendants, Los Angeles Milk Industry Board, Milk Producers, Inc., a California corporation, Richard Cronshey, William Corbett, David P. Howells, George A. Cameron, F. A. Lucas, Earl Maharg, A. G. Marcus, M. H. Adamson, T. E. Day, W. H. Stabler, Max Buechert, C. W. Hibbert, W. J. Kuhrt, George E. Platt, A. M. McOmie, T. H. Brice, T. M. Erwin, A. R. Read, R. C. Perkins, Ross Weaver, Anders Larsen, Enforcement Officer of the Agricultural Adjustment Administration of the United States Department of Agriculture for the Los Angeles Sales Area, H. C. Darger, Market Administrator under License No. 57, License for Milk, Los Angeles, California Sales Area, Peirson M. Hall, United States District Attorney for the Southern District of California, and Harry W. Berdie, Regional Representative of the Licensing and Enforcement Section of the Agricultural Adjustment Administration of the United

States Department of Agriculture, their agents, attorneys, successors and employees, be, and they and each of them are hereby enjoined and restrained, during the pendency of this action and until the final determination thereof, from:

(a) Making any of the demands and committing any of the acts with relation to the said plaintiffs hereinbefore mentioned or complained of in the Bill and Supplemental Bill of Complaint of plaintiffs, heretofore filed herein;

(b) In any manner interfering with plaintiffs or any of them in the conduct of their respective businesses, by any form of civil or criminal proceedings or otherwise;

(c) Enforcing or attempting to enforce as against the plaintiffs or any of them, any of the terms and provisions of Licenses No. 17 and No. 57, Licenses for Milk of the United States Department of Agriculture, Agricultural Adjustment Administration, Los Angeles Sales Area;

(d) Collecting or attempting to collect from plaintiffs or any of them, any of the sums of money demanded by defendants or any of them under the terms and provisions of said Licenses Nos. 17 and 57, either by civil or criminal proceedings or otherwise; or from commencing, prosecuting or maintaining any action against any of the defendants for the collection of any of said sums or from taking any action against said plaintiffs or any of them by any form of civil or criminal proceedings or otherwise, to enforce any penalty or penalties prescribed in the National Agricultural Adjust-

ment Act, or any rules or regulations purported to have been issued thereunder by the Secretary of Agriculture.

Done in open Court this 20th day of September, 1934.

GEO. COSGRAVE,
Judge.

Approved as to form:

FARRAND & SLOSSON,

E. H. WHITCOMBE,

By E. H. WHITCOMBE,

Attorneys for Defendants.

[Endorsed]: Filed Sept. 20, 1934. R. S. Zimmerman,
Clerk. By L. Wayne Thomas, Deputy Clerk.

[TITLE OF COURT AND CAUSE]

No. 144-C, Equity

OBJECTIONS UNDER RULE 44 TO FORM OF
PRELIMINARY INJUNCTION

COMES Now defendants in the above entitled action by Peirson M. Hall, United States Attorney for the Southern District of California, and Clyde Thomas, Assistant United States Attorney for said District, and object under Rule 44 to the form of the preliminary injunction as presented to them the 18th day of September for their approval under said Rule for the following reasons:

I.

Said preliminary injunction does not set forth the reasons for the issuance of the same.

II.

Said preliminary injunction is not specific in terms.

III.

Said preliminary injunction does not describe in reasonable detail the act or acts to be restrained.

DATED: September 19, 1934.

Peirson M. Hall
PEIRSON M. HALL,
United States Attorney.
Clyde Thomas
CLYDE THOMAS,
Assistant United States Attorney.

[Endorsed]: Filed Sept. 19, 1934. R. S. Zimmerman,
Clerk. By L. Wayne Thomas, Deputy Clerk.

[TITLE OF COURT AND CAUSE]

No. 144-C Eq.

NOTICE OF MOTION TO DISSOLVE
PRELIMINARY INJUNCTION.

To: Plaintiffs, CHARLES J. KURTZ, WESTERN HOLSTEIN FARMS, INC., VALLEY DAIRY, INC., and the LUCERNE CREAM AND BUTTER COMPANY; and LEWIS D. COLLINGS, EDWARD M. SELBY, and H. C. JOHNSTON, their attorneys.

Please take notice that on the 1st day of October, 1934, at two o'clock in the afternoon of said day or as soon thereafter as counsel can be heard, the defendants above named, will move the above court in the courtroom of Judge Cosgrave, in the Federal Building, Los Angeles, California, to dissolve the preliminary injunction heretofore granted against said defendants, and that said motion will be based on the records and files in this case,

three affidavits of E. W. Gaumnitz, which are filed herewith, hereby referred to and made a part hereof, and on oral testimony to be adduced on the hearing of said motion. Copy of said motion is hereunto attached and made a part hereof and contains the grounds upon which it will be made.

DATED: September 24th, 1934.

Peirson M. Hall,
PEIRSON M. HALL,
United States Attorney.

Clyde Thomas,
CLYDE THOMAS,
Assistant United States Attorney.

[TITLE OF COURT AND CAUSE]

No. 144-C Eq.

MOTION TO DISSOLVE PRELIMINARY
INJUNCTION.

NOW COME Harry W. Berdie, Los Angeles Milk Industry Board, Milk Producers, Inc., Richard Cronshey, William Corbett, David P. Howell, George A. Cameron, F. A. Lucas, Earl Maharg, A. G. Marcus, M. H. Adamson, T. E. Day, W. H. Stabler, Max Buechert, C. W. Hibbert, W. J. Kuhrt, George E. Platt, A. M. McOmie, T. H. Brice, T. M. Erwin, A. R. Read, R. C. Perkins, Ross Weaver, Anders Larsen, H. C. Darger, and Peirson M. Hall, defendants in the above entitled cause and move the court to dissolve the preliminary injunction granted by it on the 20 day of September, 1934, on the grounds that:

I.

The bill of complaint and supplemental bill of complaint heretofore filed do not state a cause of action against these defendants, or any of them, for all the reasons set out in the motions to dismiss filed in the above entitled action, which motions to dismiss are hereby referred to and made a part hereof.

II.

Said plaintiffs, and each of them, are subject to the Agricultural Adjustment Act and the Milk License and all rules and regulations issued thereunder.

III.

Said temporary injunction was improperly issued and not in accordance with law for the following reasons:

(a) No security was required of plaintiffs or given by them as is necessary under Title 28, U. S. C. 382.

(b) Said temporary injunction does not comply with Title 28, U. S. C. 383, as it does not (1) set forth the reasons why it was issued; (2) Is not specific in its terms; (3) Does not describe in reasonable detail the act or acts sought to be restrained.

(c) Said temporary injunction attempts to restrain executive officers in the exercise of discretionary duties which is not within the power of this court.

(d) Said injunction was improvidently issued as the equities of the case preponderate in favor of the defendants. The possibility of damage or injury, which plaintiffs allege in their complaint that they anticipate, is greatly out-weighed by the injury that will be done to the entire industry, and the efforts of the Administration to benefit such industry in its entirety, by a declaration of

this court that such acts are unconstitutional, even before the trial is heard and contrary to the strong presumption of constitutionality of an act of Congress and of actions of executive officers of the Government.

Peirson M. Hall,
PEIRSON M. HALL,
United States Attorney.

Clyde Thomas,
CLYDE THOMAS,
Assistant United States Attorney.

[Endorsed]: Filed Sept. 25, 1934. R. S. Zimmerman,
Clerk. By L. Wayne Thomas, Deputy Clerk.

[TITLE OF COURT AND CAUSE]

IN EQUITY
No. 144-C

NOTICE OF MOTION TO DISMISS
PROCEEDINGS

To the plaintiffs, Charles J. Kurtz, Western Holstein Farms, Inc., Valley Dairy Company, Inc., Lucerne Cream and Butter Company, Inc., and to Lewis D. Collings, Edward M. Selby, and Harold C. Johnston, Attorneys.

You, and each of you, will please take notice that the Defendants Harry W. Berdie, Los Angeles Milk Industry Board, Milk Producers, Inc., Richard Cronshey, William Corbett, David P. Howells, George A. Cameron, F. A. Lucas, Earl Maharg, A. O. Marcus, M. H. Adamson, T. E. Day, W. H. Stabler, Max Beuchert, C. W. Hibbert, W. J. Kuhrt, George E. Platt, A. M. McOmie, T. H.

Brice, T. M. Erwin, A. R. Read, R. C. Perkins, Ross Weaver, Anders Larsen, H. C. Darger, Peirson M. Hall, will move the above entitled court at the court room of Judge George Cosgrave, in the Federal Building, Los Angeles, California, on the 1st day of October, 1934, at the hour of 2 o'clock in the afternoon or as soon thereafter as the counsel can be heard for an order to dismiss the above entitled proceedings.

Said motion will be based on the pleadings, records, and files in the above entitled action and all thereof, and on the affidavits of Anders Larsen attached to said motion and made a part thereof and on oral testimony to be adduced at said hearing, upon the grounds stated in said motion a copy of which motion is herewith served upon you.

Dated:—September 24, 1934.

Peirson M. Hall,
PEIRSON M. HALL,
U. S. Attorney

Clyde Thomas,
CLYDE THOMAS,
Assistant U. S. Attorney

[TITLE OF COURT AND CAUSE]

IN EQUITY

No. 144-C

MOTION TO DISMISS PROCEEDINGS

Come now the defendants, Harry W. Berdie, Los Angeles Milk Industry Board, Milk Producers, Inc., Richard Cronshey, William Corbett, David P. Howells, George A. Cameron, F. A. Lucas, Earl Maharg, A. G. Marcus, M. H. Adamson, T. W. Day, W. H. Stabler, Max Buechert,

C. W. Hibbert, W. J. Kuhrt, George E. Platt, A. M. McOmie, T. H. Brice T. M. Erwin, A. R. Read, R. C. Perkins, Ross Weaver, Anders Larsen, H. C. Darger, Peirson M. Hall, by Peirson M. Hall, United States Attorney in and for the Southern District of California, and Clyde Thomas, Assistant United States Attorney in and for said District and State, move the court to dismiss the Bill of Complaint and Supplemental Bill of Complaint in this cause upon each and all of the following grounds:

I.

That it does not state a cause of action over which a court of equity has any jurisdiction whatsoever.

II.

That it does not allege any facts from which it appears that the plaintiffs, or either of them, will suffer irreparable injury if the injunctions prayed for in the bill of complaint are not granted; on the contrary, it affirmatively appears from the bill of complaint that the plaintiffs are in no danger of suffering any immediate and irreparable injury whatever if the injunction prayed for *are* not granted, in that:

(a) It does not allege any facts from which it appears that the plaintiffs, or either of them, will be subjected to a multiplicity of suits.

(b) It does not allege any facts from which it appears that the business and good will of the plaintiffs, or either of them, will be injured by the refusal of others to deal with the plaintiffs.

(c) It does not allege any facts entitling plaintiffs to join as plaintiffs but to the contrary is drawn on the

theory that the business of the various plaintiffs if not subject to regulations under the interstate commerce clause which, if it were a correct theory, would require that the business of each plaintiff be tried separately.

III.

The bill of complaint fails to allege that the plaintiffs, or either of them, have exhausted the administrative remedies specifically afforded them by Section 218, Article 2, General Regulations, Series 3, promulgated by the Secretary of Agriculture and approved by the President of the United States, in that plaintiffs make no showing of having made an application to the Secretary for reinstatement under the License, and fails to allege any excuse for the failure of the plaintiffs to exhaust said administrative remedies. Therefore, plaintiffs' suit is premature.

IV.

That it does not allege any facts from which it appears that the Agricultural Adjustment Act or any part thereof or License No. 17 or License No. 57, Los Angeles Milk Area or the rules and regulations are in any respect unconstitutional or void. Nor does it allege any facts from which it appears that the application of said Act of said Licenses to the business of the plaintiffs, or either of them, is in any respect unauthorized or unconstitutional.

(a) It affirmatively appears that said licenses and each of them is reasonable, and neither of them deprives the plaintiffs, or either of them, of property without due process of law.

(b) It affirmatively appears from the provisions of said License that it is a proper and constitutional exer-

cise of the power of Federal Government to regulate commerce among the States.

(c) The Bill of Complaint does not allege any fact from which it appears that the plaintiffs, or either of them, are engaged in shipping milk products to and from the State of California in the current of interstate or foreign commerce.

(d) The Bill of Complaint does not allege any facts from which it appears that said Agricultural Adjustment Act or any part thereof is unconstitutional because it unlawfully delegates legislative or judicial authority to an executive officer.

V.

That the Secretary of Agriculture has not been made a party to said action and he is a necessary and indispensable party for the determination of said suit as he is the administrative official who issued the license to the plaintiffs and he is the only one who can revoke or modify it and, in fact, the only official who has any authority in the administration of the Agricultural Adjustment Act, and all defendants named are merely subordinates performing duties under the direction of and for the said Secretary of Agriculture.

VI.

That it appears from said bill of complaint that the defendants and each of them is engaged in the administration of an Act of Congress and are acting under the orders of the Secretary of Agriculture and that all acts of said defendants and said Secretary of Agriculture are discretionary and not within the power of this court to enjoin.

VII.

That it appears from the Bill of Complaint, the Supplemental Bill of Complaint, and the files of this case that the plaintiffs and each of them in compliance with certain provisions of said licenses deducted and retained a large amount of money from the producers from whom they and each of them purchased milk, but continue to retain and have failed and refused to pay said money to the agency specified in said licenses for distribution to those for whose benefit such deductions were made and that plaintiffs or any of them do not come into equity with clean hands but having taken the benefits of said licenses are and each of them is estopped from denying the legality of said license and of the laws, rules and regulations authorizing its issuance.

VIII.

That an injunction to restrain a suit in the State Courts of the State of California is specifically prohibited by Section 379 U. S. C. Title 28.

WHEREFORE, these defendants pray that said bill of complaint and said supplemental bill be dismissed and that they recover their cost herein.

Peirson M. Hall

PEIRSON M. HALL,

United States Attorney.

Clyde Thomas

CLYDE THOMAS,

Assistant United States Attorney.

[Endorsed]: Filed Sept. 25, 1934. R. S. Zimmerman,
Clerk. By L. Wayne Thomas, Deputy Clerk.

At a stated term, to wit: The September Term, A.D. 1934, of the District Court of the United States of America, within and for the Central Division of the Southern District of California, held at the Court Room thereof, in the City of Los Angeles, California, on Monday, the 1st day of October, in the year of our Lord one thousand nine hundred and thirty-four.

Present: The Honorable Geo. Cosgrave, District Judge.

CHARLES J. KURTZ, et al.,

Plaintiffs,

vs.

HARRY W. BERDIE, et al.,

Defendants.

No. Eq.-144-C.

This cause coming on for hearing on Motion of Harry W. Berdie, Los Angeles Milk Industry Board, Milk Producers, Inc., Richard Cronshey, Wm. Corbett, David P. Howells, Geo. A. Cameron, F. A. Lucas, Earl Maharg, A. G. Marcus, M. H. Adamson, T. E. Day, W. H. Stabler, Max Buechert, C. W. Hibbert, W. J. Kuhrt, Geo. E. Platt, A. M. McOmie, T. H. Brice, T. M. Erwin, A. R. Read, R. C. Perkins, Ross Weaver, Anders Larsen, H. C. Darger, Peirson M. Hall to Dismiss the above entitled proceedings, pursuant to Notice filed September 25th, 1934; Lewis D. Collings, Edw. M. Selby and H. C. Johnston, Esqs., appearing for the plaintiffs, and Peirson M. Hall, U. S. Attorney, and Clyde Thomas, Assistant U. S. Attorney, appearing for the defendants, said Motion is denied and an exception noted.

This cause also coming on, at this time, for hearing on Motion of the defendants to Dissolve Preliminary Injunction, pursuant to Notice filed September 25th, 1934; the said Lewis D. Collings, Edw. M. Selby and H. C. Johnston, Esqs., appearing, as aforesaid, the said Edw. M. Selby and the said Peirson M. Hall, Esqs., argue to the Court, Peirson M. Hall, Esq., argues to the Court and moves for permission to amend Motion to Dismiss on page 3, line 4, which Motion is granted, following which Edw. M. Selby, Esq., argues to the Court and Leonard Slosson, Esq., thereupon joins in said Motion of Peirson M. Hall, Esq., whereupon the said H. C. Johnston, Esq., argues to the Court, Lewis D. Collings, Esq., makes a statement, Peirson M. Hall makes a further statement, the Court makes a statement, and J. W. LaPointe being present as the official stenographic reporter of the testimony and the proceedings, the Court orders: Relative to the Motion of defendants to Dissolve the Preliminary Injunction, counsel for the plaintiffs are ordered to prepare an Order to this effect; that the Restraining Order be continued in force and effect on the condition that within ten (10) days the money that the plaintiffs withhold from their producers by reason of the milk license, or rather, the operation of the milk license, be deposited in court with full detail as to the persons, the amounts and the dates.

At a stated term, to wit: The September Term, A.D. 1934, of the District Court of the United States of America, within and for the Central Division of the Southern District of California, held at the Court Room thereof, in the City of Los Angeles, on Wednesday, the

3rd day of October, in the year of our Lord one thousand nine hundred and thirty-four.

Present: The Honorable Geo. Cosgrave, District Judge.

[TITLE OF COURT AND CAUSE]

In Equity, No. 144-C

This cause having come before the Court on January 22nd, 1934, for hearing on Motion of defendant W. J. Kuhrt, for himself alone and severing from his co-defendants, appearing specially, to vacate or dissolve the Temporary Restraining Order issued by this Court on January 15th, 1934, pursuant to Notice of Motion filed January 19th, 1934; and the Court having heard the argument of counsel herein, ordered said Motion stand submitted, and the Court having thereupon duly considered the same and being now fully advised in the premises, ordered as follows, to-wit:

Motion of defendants to dismiss plaintiffs' supplemental bill of complaint and to vacate the temporary restraining order heretofore issued is denied. Exception to defendants.

It is further ordered that within ten days after the date of this order plaintiffs deposit with the Clerk of this court that portion of the price of the milk purchased by them from any of the producers other than plaintiffs themselves, which, under the terms of the license they were required to deduct and pay to the administrators of the Milk License in the Los Angeles Area.

They shall within said time prepare and file with the Clerk of this court a statement designating the several sellers of milk from whom such payment has been withheld, together with the amount withheld from each.

COPY

[TITLE OF COURT AND CAUSE]

In Equity No. 444-C.

ORDER CORRECTING AND AMENDING MINUTE ORDER OF OCTOBER 3, 1934.

COSGRAVE, District Judge.

It is hereby ordered that the Order heretofore made and entered under date of October 3, 1934 in the above matter, is hereby corrected and amended as follows:

Motion of defendants to dismiss plaintiffs' supplemental bill of complaint and to vacate the temporary injunction heretofore issued is denied. Exception as to defendants.

It is further ordered that within ten (10) days from October 3rd, 1934 plaintiffs individually shall deposit with the Clerk of this Court that portion, if any, of the price of the milk purchased from any producer, other than plaintiffs themselves, which they are now withholding as deductions of any kind or nature pursuant to any orders or demands of the Administrators of the Milk Licenses in the Los Angeles Area.

They shall within said time prepare and file with the Clerk of this Court statements from or designating the several producers or sellers of milk, from whom any such payments have been withheld, together with the amount withheld from each.

Done in open Court this 10th day of October, 1934.

GEO. COSGRAVE,
District Judge.

Approved as to form:

CLYDE THOMAS,
Asst. U. S. Atty.,
Attorneys for Defendants.

[Endorsed]: Filed Oct 10, 1934 R. S. Zimmerman,
Clerk. By Frances E. Cross, Deputy Clerk.

IN THE DISTRICT COURT OF THE UNITED
STATES, SOUTHERN DISTRICT OF
CALIFORNIA, CENTRAL DIVISION

CHARLES J. KURTZ, ET AL.

Plaintiffs,

vs.

HARRY W. BERDIE, ET AL.,

Defendants.

IN EQUITY

No. 144-C.

PETITION FOR APPEAL

The defendants Harry W. Berdie, Los Angeles Milk Industry Board, Milk Producers, Inc., a California cor-

poration, Richard Cronshey, William Corbett, David P. Howells, George A. Cameron, F. A. Lucas, Earl Maharg, A. G. Marcus, M. H. Adamson, T. E. Day, W. H. Stabler, Max Buechert, C. W. Hibbert, W. J. Kuhrt, George E. Platt, A. M. McOmie, T. H. Brice, T. M. Erwin, A. R. Read, R. C. Perkins, Ross Weaver, Anders Larsen, H. D. Darger and Peirson M. Hall, as United States District Attorney for the Southern District of California, conceiving themselves aggrieved by the order and decree made and entered in the above entitled cause on September 20, 1934, granting plaintiffs' motion for a preliminary injunction, as well as by a prior order of September 7, 1934, overruling their motions objecting to the filing of the supplemental bill of complaint and moving to dismiss the proceeding, and by the order and decree of October 2, 1934, overruling defendants' motions to vacate and dissolve the preliminary injunction and to dismiss the proceeding, hereby appeal from said orders and decrees of September 20, 1934, and October 2, 1934, to the United States Circuit Court of Appeals for the Ninth Circuit for the reasons specified in the assignment of errors which is filed herewith; and the defendants in open court and during the same term at which the orders and decrees were rendered pray that this appeal be allowed and that a transcript of the record, proceedings, and papers upon which said orders and decrees were made, duly authenticated, be sent to the United States Circuit Court of Appeals for the Ninth Circuit.

It is further prayed that this appeal may be allowed without the giving of a cost bond, this being a case

brought up by the United States of America and by direction of the Attorney General thereof.

This 17th day of October, 1934.

Peirson M. Hall,
PEIRSON M. HALL,
United States Attorney for the Southern
District of California.

CLYDE THOMAS,
Asst. U. S. Atty.

Mac Asbill,
MAC ASBILL,
Special Assistant to the Attorney
General.

E. H. Whitcombe
E. H. WHITCOMBE
Ferrand & Slosson
FERRAND & SLOSSON
Attorneys for Defendants.

[Endorsed]: Filed Oct 17, 1934 R. S. Zimmerman,
Clerk. By L. Wayne Thomas, Deputy Clerk.

[TITLE OF COURT AND CAUSE]

IN EQUITY
No. 144-C

ASSIGNMENT OF ERRORS

Come now the defendants, Harry W. Berdie; Los Angeles Milk Industry Board, Milk Producers, Inc., a California corporation; Richard Cronshey; William Corbett; David P. Howells; George A. Cameron; F. A. Lucas; Earl Maharg; A. G. Marcus; M. H. Adamson;

T. E. Day; W. H. Stabler; Max Buechert; C. W. Hibbert; W. J. Kuhrt; George E. Platt; A. M. McOmie; T. H. Brice; T. M. Erwin; A. R. Read R. C. Perkins; Ross Weaver; Anders Larson; H. C. Darger; and Peirson M. Hall, as United States District Attorney for the Southern District of California, and respectfully submit the following joint assignment of errors upon which they will rely upon appeal from the order and decree of this Court granting a preliminary injunction entered in said cause on the 20th day of September, 1934, and from the order and decree entered on October 2, 1934, overruling motions to dissolve the preliminary injunction and to dismiss the proceeding:

1. The Court erred in allowing the filing of the supplemental bill of complaint over the objections of defendants and despite evidence showing that none of the plaintiffs were any longer engaged in the business of distributing milk within the Los Angeles sales area;

2. The Court erred in overruling defendants' motion to dismiss the proceeding for the reason that the original and supplemental bills set out no cause of action in equity;

3. The Court erred in overruling defendants' motions to dismiss the proceeding for the reason that the evidence showed that none of the plaintiffs were any longer engaged in the business of distributing milk within the Los Angeles sales area, and had not been so engaged since the date upon which their licenses were revoked; and hence could not be subject to any danger of irreparable injury because of the revocation of their licenses;

4. The Court erred in entering a decree granting a preliminary injunction as sought in the original and supplemental bills of complaint;

5. The Court erred in overruling the objections of defendants to the form of preliminary injunction issued because said injunction does not set forth the reasons for its issuance and does not describe in reasonable detail the acts which it restrains;

6. In granting the preliminary injunction and in overruling the motion of defendants to dissolve same, the Court erred in holding that the general licenses issued by the Secretary of Agriculture and the Agricultural Adjustment Act, both under attack herein, were not valid regulations of the milk business conducted by plaintiffs within the Los Angeles sales area at the time their licenses were revoked;

7. In granting the preliminary injunction and in overruling the motion of defendants to dissolve same, the Court erred in holding that plaintiffs were not subject to the terms of the Agricultural Adjustment Act and bound by the provisions of the general licenses issued by the Secretary of Agriculture governing all distributors of milk operating within the Los Angeles sales area at the time that plaintiffs' licenses were revoked;

8. In granting the preliminary injunction and in overruling the motion of defendants to dissolve same, the Court erred for the reason that the evidence showed that plaintiffs were not engaged in the business of distributing milk in the Los Angeles sales area at the time said injunction was granted, and had not been so engaged since the date upon which their licenses were revoked;

9. In granting the preliminary injunction and in overruling the motion of defendants to dissolve same, the Court erred in holding that the original and supplemental

bills of complaint and the evidence made out a case warranting the exercise of equity jurisdiction by the Court;

10. In granting a preliminary injunction and in overruling the motion of defendants to dissolve same, the Court erred because defendants had no power to enforce penalties, fines or forfeitures of any kind against plaintiffs, or any of them, by virtue of the Los Angeles Milk License, the Agricultural Adjustment Act, the regulations promulgated by the Secretary and approved by the President under authority of said Act, or the order revoking plaintiffs' licenses because plaintiffs have not engaged in business as distributors of milk in the Los Angeles sales area since revocation of their licenses;

11. In granting the preliminary injunction as to all of the defendants except the defendant Peirson M. Hall, and in denying the motion of said defendants to dissolve the same, the Court erred because none of said defendants has any power to enforce the Los Angeles Milk License against plaintiffs or to enforce any penalties, fines or forfeitures against them, by virtue of said license or the Agricultural Adjustment Act;

12. In granting the preliminary injunction and in overruling the motion of defendants to dissolve same, the Court erred for the reason that none of the defendants were seeking to prosecute plaintiffs, or any of them, for engaging in business without a license;

13. In granting the preliminary injunction which stays proceedings in courts of the State of California, described in Paragraph XLVIII of the supplemental bill, the Court erred in that such injunction is specifically prohibited by Title 28, U. S. C. A., Section 379;

14. The Court erred in overruling the joint motion of all defendants to dismiss the proceeding for all the reasons contained in said motion filed after the issuance of the preliminary injunction.

15. The Court erred in granting the preliminary injunction and in overruling the motion of defendants to dissolve the same for the reason that no bond was required of the plaintiffs as required by Section 382, Title 28, U. S. C. A.

16. The Court erred in granting a preliminary injunction and overruling the motion of defendants to dissolve the same for the reason that plaintiffs are estopped to deny the validity of the Milk License and the Agricultural Adjustment Act by the fact that they retained and kept monies from producers as required by said license and have not accounted for the same and have not come into equity with clean hands for the same reason.

17. The Court erred in granting the preliminary injunction and in overruling the motion of defendants to dissolve the same and denying the motion to dismiss the bill and supplemental bill as to all defendants except the defendants Anders Larsen, H. C. Darger and Peirson M. Hall, for the reason that such other defendants operated only under License No. 17 which has been terminated, and had no authority or duties under License No. 57 which is now in effect.

18. That the Court erred in granting the preliminary injunction and overruling the motion of defendants to dissolve the same, and in denying the motion of defendants to dismiss for the reason that they had not exhausted their administrative and legal remedies.

19. That the Court erred in rejecting and denying admission of the evidence offered by the defendants which offer was to prove by fifty-eight producers of milk that the plaintiffs had purchased milk from them in accordance with the provisions of the license, had paid the price fixed by the license therefor and deducted therefrom the sums of money required by said license to be deducted and retained for the purpose of paying the same to Milk Producers, Inc., or the Market Administrator, as also provided by said licenses.

WHEREFORE, defendants pray that the foregoing order and decree of preliminary injunction and the order and decree overruling the motion to dissolve the preliminary injunction be reversed and that the United States District Court for the Southern District of California, Central Division thereof, be directed to proceed as the equity of the case shall require.

Peirson M Hall .

PEIRSON M. HALL,

United States Attorney for the Southern
District of California.

Clyde Thomas

CLYDE THOMAS,

Assistant United States Attorney, Southern
District of California.

Mac Asbill

MAC ASBILL,

Special Assistant to the Attorney General.

E. H. Whitcombe

E. H. WHITCOMBE

Ferrand & Slosson

FERRAND & SLOSSON

Attorneys for Defendants.

[Endorsed]: Filed Oct. 17, 1934. R. S. Zimmerman, Clerk. By L. Wayne Thomas, Deputy.

[TITLE OF COURT AND CAUSE]

In Equity No. 144-C

ORDER ALLOWING APPEAL

The petition of the defendants Harry W. Berdie, Los Angeles Milk Industry Board, Milk Producers, Inc., a California corporation, Richard Cronshey, William Corbett, David P. Howells, George A. Cameron, F. A. Lucas, Earl Maharg, A. G. Marcus, M. H. Adamson, T. E. Day, W. H. Stabler, Max Buechert, C. W. Hibbert, W. J. Kuhrt, George E. Platt, A. M. McOmie, T. H. Brice, T. M. Erwin, A. R. Read, R. C. Perkins, Ross Weaver, Anders Larsen, H. C. Darger and Peirson M. Hall, as United States District Attorney for the Southern District of California, praying an appeal from the order and decree of preliminary injunction granted in favor of plaintiffs herein, and from the order and decree overruling the motions to vacate the preliminary injunction and to dismiss the proceeding being now presented in open court and during the term said orders and decrees were entered, together with their assignment of errors, it is hereby ordered that said papers be filed, and it is further ordered:

1. That the appeal be allowed to the United States Circuit Court of Appeals for the Ninth Circuit as prayed, and that the transcript of such parts of the record and proceeding herein, as the parties may by praecipe duly designate, be transmitted, duly authenticated, to said

United States Circuit Court of Appeals for the Ninth Circuit at San Francisco, California, in the manner provided by law.

2. That no cost bond be required, it appearing that this appeal is brought up by the United States and by the direction of the Attorney General thereof.

3. That a citation be issued admonishing plaintiffs to be and appear in the United States Circuit Court of Appeals for the Ninth Circuit on or before thirty days from the date of this order.

4. Application of defendants for an order of super-sedeas of the preliminary injunction is denied.

GEO. COSGRAVE

United States District Judge.

October 18, 1934.

[Endorsed]: Filed Oct. 18, 1934 R. S. Zimmerman, Clerk. By Francis E. Cross, Deputy Clerk.

[TITLE OF COURT AND CAUSE]

In Equity No. 144-C

NARRATIVE STATEMENT OF THE EVIDENCE

A. Evidence for Plaintiffs

Plaintiffs introduced in evidence the verified original and supplemental bills of complaint. Both complaints are part of the record herein, are included in the prae-cipe and are by reference made a part hereof without restating their contents.

(Testimony of Geo. O. Stoddard)

GEO. O. STODDARD, being duly sworn, testified by affidavits as *as* follows:

I am now and at all times herein mentioned was the duly elected, qualified and acting Secretary of Western Holstein Farms, Inc., a corporation, one of the Plaintiffs herein. I have read the affidavits of W. J. Kuhrt, O. R. Fuller and Earl Maharg attached to the motion to dismiss proceedings and the motion to vacate or dissolve temporary restraining order filed herein. It is not true that the said Western Holstein Farms, Inc., has sold, assigned and/or transferred all of its business and assets as set forth in said affidavits; but the truth is that said plaintiff, Western Holstein Farms, Inc., has only relinquished and transferred that portion of its business having to do with the distribution of fluid milk within that territory known and described as the "Los Angeles Sales Area" in the purported licenses attached to plaintiffs' original and supplemental complaint herein, and over which territory and business the defendants are assuming the power of control and direction, as is more fully set forth in said complaints.

The transfer of such portion of the business of said plaintiff Western Holstein Farms, Inc., was on account of its fear of prosecution and of the excessive and prohibitive penalties provided for in such licenses, and the said Agricultural Act, as is more fully set forth in the complaints herein.

Said plaintiff Western Holstein Farms, Inc., intends to and will return to the business of distributing milk for human consumption within said Los Angeles Sales Area

(Testimony of Geo. O. Stoddard)

when it can safely do so without the threat of the penalties and prosecution hereinbefore mentioned.

That he is the duly elected, qualified and acting secretary of Palo Verde Creamery, Inc., a corporation.

That said corporation is separate and distinct from the Western Holstein Farms, Inc., and that neither owns any stock whatsoever in the other, and they do not own any property in common with each other, and have many separate and distinct stockholders.

That he has read the affidavit of Anders Larsen, filed with and attached to the motion to dismiss proceedings, and the facts set forth therein upon information and belief are untrue.

That Western Holstein Farms, Inc. do not sell, transport, and/or deliver any milk or dairy products of any kind or character whatsoever within the State of Arizona or any place outside the State of California.

That said Western Holstein Farms, Inc. sells its surplus milk and cream to Palo Verde Creamery, Inc. and that such milk and cream so sold by Western Holstein Farms, Inc. to Palo Verde Creamery Inc. is converted by said Palo Verde Creamery Inc. into butter and is not used for any other purpose.

That Palo Verde Creamery Inc. owns and operates a creamery at Blythe, California, and that it produces milk from its own herds located at Blythe, California.

That said Blythe, California, is not within the boundaries of the Los Angeles Milk Shed or within the Los Angeles Sales Area.

(Testimony of Geo. O. Stoddard)

That no milk sent by Western Holstein Farms, Inc. from Los Angeles or from the Los Angeles Sales Area or Los Angeles Milk Shed to Blythe, California, is bottled or used for any purpose other than butter.

That no milk, cream, or other dairy products are sold or transported by either corporation outside of the State of California.

That said Palo Verde Creamery Inc. at Blythe, California, sells milk, cream, butter and other dairy products to one P. E. Woodson, but that all of said milk, cream, butter and other dairy products are sold to the said P. E. Woodson at the creamery of the said Palo Verde Creamery Inc. at Blythe, California, and are delivered to said P. E. Woodson at said place and not otherwise.

That neither corporation has a permit or license to do business within the State of Arizona and does not transact any business within the State of Arizona.

That said Palo Verde Creamery Inc. is not a subsidiary in law or in fact of Western Holstein Farms, Inc.

That Western Truck Lines Ltd. of Los Angeles, California, is not in the habit of nor does it transport any milk, cream, or other dairy products for either of said companies into the State of Arizona or to any point outside the State of California.

That said Western Holstein Farms, Inc. does not have in its possession any monies deducted from producers who sold milk to them in accordance with or under the provisions of either license No. 17 or No. 57, and that said corporation has not collected from any producer any money in the form of deductions.

(Testimony of Charles J. Kurtz)

CHARLES J. KURTZ, being duly sworn, testified by affidavit as follows:

I am one of the plaintiffs in the above-entitled and numbered cause. I have read the affidavits of W. J. Kuhrt, O. R. Fuller and Earl Maharg attached to the motion to dismiss proceedings and the motion to vacate or dissolve temporary restraining order filed herein. It is not true that I have sold, assigned and/or transferred all of my business and assets as set forth in said affidavits, but have only relinquished and transferred that portion of my business having to do with the distribution of fluid milk within that territory known and described as the "Los Angeles Sales Area" in the purported licenses attached to plaintiffs' original and supplemental complaint herein, and over which territory and business the defendants are assuming the power of control and direction, as is more fully set forth in said complaint.

The transfer of such portion of my business was on account of my fear of prosecution and of the excessive and prohibitive penalties provided for in such licenses, and the said Agricultural Act, as is more fully set forth in the complaints herein.

I intend to and will return to the business of distributing whole milk for human consumption within said Los Angeles Sales Area when I can safely do so without the threat or intimidation of the penalties and prosecution hereinbefore mentioned.

That the statements made in the affidavits of Anders Larsen as to the deductions and withholding of moneys

(Testimony of Charles J. Kurtz)

from producers by said Charles J. Kurtz are wholly untrue and that he has not deducted nor withheld any money from producers of milk in accordance with said license or either of them, and has no such money in his possession.

(Testimony of Drummond Wilde)

DRUMMOND WILDE, being duly sworn, testified by affidavit as follows:

I am the Vice President of THE LUCERNE CREAM AND BUTTER COMPANY, a California corporation, one of the plaintiffs in the above-entitled action. It is not true that the said plaintiff company has at any time transferred all of its assets to other individuals or other corporations. The Lucerne Cream and Butter Company did, upon receiving notice of the Order of the Secretary of Agriculture revoking its license to engage in the business of distributing, marketing, or handling milk or cream as a distributor in the Los Angeles Sales Area, sell a portion of its equipment which was located in the City of Los Angeles, California. This was solely because of the threat and menace of a fine up to \$1000.00 per day as provided by the Agricultural Adjustment Act for engaging in business without a license and to which said Lucerne Cream and Butter Company would be liable in the event that its claim that Milk License No. 17 and Milk License No. 57 are void should not be sustained by the courts. Said plaintiff company has not engaged in the business of distributing, marketing or handling milk

(Testimony of Drummond Wilde)

or cream as a distributor in the Los Angeles Sales Area since the 28th day of July, 1934, but is engaged in the business of distributing, marketing and handling milk and cream at other places in the state of California and desires to and intends to engage in the business of distributing, marketing and handling milk and cream as a distributor in the Los Angeles Sales Area, and will again engage in said business as soon as the menace and threat of said unreasonable penalty and fine has been removed. The summons and complaint in the action referred to in plaintiff's supplemental bill of complaining herein is an action commenced in the Superior Court of the State of California, in and for the County of Los Angeles by Milk Producers, Inc., one of the defendants herein against said The Lucerne Cream and Butter Company, was served upon said company on the 2nd day of August, 1934, and subsequent to the time it ceased to distribute milk or cream in the Los Angeles Sales Area. Said action is for the purpose of collecting from said plaintiff The Lucerne Cream and Butter Company moneys which Milk Producers, Inc. claims to be entitled to only by reason of the provisions of said License No. 17 and License No. 57, each of which is claimed by the plaintiffs herein to be void.

(Testimony of B. Fratkin)

B. FRATKIN, Being duly sworn, testified by affidavit as follows:

I am an officer, to wit the President, of Valley Dairy Company, Inc., one of the plaintiffs herein, and as such

(Testimony of B. Fratkin)

have full knowledge of the facts and matters hereinafter set forth. I have read the affidavits of W. J. Kuhrt, O. R. Fuller, and Earl Maharg filed herein upon the motions for an order vacating or dissolving the temporary restraining order heretofore issued herein and for an order dismissing the within proceedings, and more particularly those parts thereof referring to the sale and transfer of the assets of said Valley Dairy Co., Inc. It is not true that Valley Dairy Co., Inc. has sold, assigned or transferred all of its business and assets to other persons.

Following the issuance of the order of the Secretary of Agriculture on the 28th day of July, 1934, purporting to revoke License No. 57 as to the Valley Dairy Company, Inc., and purporting to take away the right of the said Valley Dairy Company, Inc. to engage in the business of distributing fluid milk within the Los Angeles Sales Area as defined by said license, said Valley Dairy Co., Inc. discontinued the business of distributing fluid milk within the said Los Angeles Sales Area and thereafter sold, assigned and transferred that portion of its assets theretofore used by it in the business of such distribution of fluid milk within the said Los Angeles Sales Area.

Said Valley Dairy Co., Inc., desired and still desires to continue to engage in the business of distributing fluid milk and cream in said Los Angeles Sales Area and only discontinued such business because of the act of said Secretary of Agriculture in so purporting to revoke said license, and because of the large penalty fixed by the

(Testimony of B. Fratkin)

provisions of the National Agricultural Adjustment Act for conducting such business without a license, to-wit, penalty of not exceeding \$1000.00 per day for each day such business is so conducted.

The purpose of the within proceedings by the said plaintiff, Valley Dairy Company, Inc., is for the purpose of having the National Agricultural Adjustment Act and purported license No. 57, and the former purported license No. 17 heretofore issued by the Secretary of Agriculture, and the actions of the Secretary of Agriculture against this plaintiff as set forth in Supplemental Bill of Complaint filed herein, declared unconstitutional and void and not applicable to the said plaintiff, Valley Dairy Co., Inc.

It is the intention of said Valley Dairy Co., Inc., to continue and re-engage in the business of distributing fluid milk in the event its contentions as set forth in the within action and in the original Bill and Supplemental Bill filed herein are upheld by this court, and it is freed from the threat of such excessive and oppressive penalty as hereinbefore set forth.

In addition to the assets so sold, assigned and transferred as aforesaid, the Valley Dairy Co., Inc. has other assets, and at all times has been and now is engaged in other branches of the dairy business and the distribution of so-called dairy products, and the said Valley Dairy Co., Inc. has no intention of discontinuing other business or of disposing of its other assets or any of them.

That subsequent to the issuance of License No. 17, on November 30, 1933, said Valley Dairy Company, Inc.,

(Testimony of B. Fratkin)

was instructed by its shippers, with the exception of one W. F. Eldridge, not to pay any monies to Los Angeles Milk Industry Board, or Milk Producers, Inc. in accordance with the demands thereafter and subsequent to December 1, 1933, made by said Board and Corporation; that following the issuance of License No. 57, said Valley Dairy Company, Inc., was instructed by its shippers not to make any payments to H. C. Darger, Market Administrator, in accordance with the demands made by said H. C. Darger and said Valley Dairy Company, Inc., and has not paid any monies whatsoever to said Los Angeles Milk Industry Board, said Milk Producers, Inc., and said H. C. Darger, under the terms of License No. 17 or No. 57.

That said Valley Dairy Company, Inc., has paid each and every one of its shippers during the periods subsequent to November 20, 1933, and to and including May 31, 1934, and from June 1, 1934, to July 28, 1934, on account of milk sold by said shippers to said Valley Dairy Company, Inc., the price fixed by said Los Angeles Milk Industry Board and Milk Producers, Inc., under License No. 17, and thereafter by said H. C. Darger under License No. 57, and has accumulated and held the payments claimed to be due by said Los Angeles Milk Industry Board, said Milk Producers, Inc., and said H. C. Darger, and has not paid the same because of said instructions; that such payments and such accumulations were made by said Valley Dairy Company, Inc., upon the instructions of its attorneys and pending the final determination of the within action. That said Valley Dairy

(Testimony of B. Fratkin)

Company, Inc., did not pay such accumulations, or any portions thereof, to its said shippers because it might be liable to pay the same twice should the within action be determined adversely to its contentions and in favor of the validity of said Licenses Nos. 17 and 57 and affecting the business of said Valley Dairy Company, Inc.

(Testimony of C. L. Smith)

C. L. SMITH, being duly sworn, testified by affidavit as follows:

I am the Plant Manager of the Los Angeles Plant of the Lucerne Cream and Butter Company, one of the plaintiffs in the above entitled action. It is not true that said plaintiff has at any time conducted its business in accordance with the provisions of Licenses Nos. 17 and 57 in that it paid to the producers the price fixed by said licenses less deductions provided under said licenses to be deducted and paid in accordance therewith to Milk Producers, Inc., the Milk Industry Board and the Market Administrator, but, on the contrary, said plaintiff did during all of said time, deny that said licenses, or either of them, were valid in any respect, and, as is shown in the Bill of Complaint and Supplemental Bill of Complaint herein, did during all of said time resist to the utmost the efforts of the defendants to enforce the provisions of said licenses. All milk which said plaintiff purchased from producers during said time was credited to the producer from whom purchased at the full prevailing price for milk at the time of purchase and pay-

(Testimony of C. L. Smith)

ments on account were made to such producers from time to time. That during said times, Milk Producers, Inc., and the Market Administrator, made demands upon the said plaintiff as set out in the Bill of Complaint and Supplemental Bill of Complaint and said plaintiff at all times refused to comply with said demands because of its belief that the same were unlawful and arbitrary and that said licenses were void. Each producer agreed with said plaintiff that the amount so demanded by said Market Administrator and Milk Producers, Inc., should remain to the credit of said producer until in this suit, or other litigation, there should be a final determination as to the validity of said demands made by defendants, and said plaintiff agreed with them that it would prosecute such litigation to such final determination. That said plaintiff has never received or accepted any benefits whatsoever under either of said licenses but on the contrary has expended large sums of money in defending what it believes to be the constitutional rights of plaintiffs herein and of the producers from whom plaintiffs purchased milk.

(Testimony of B. L. Brooks)

B. L. BROOKS, being duly sworn, testified by affidavit as follows:

That he is and has been since 1931, the Manager of Palo Verde Creamery, Inc., located at Blythe, California; that he has read the affidavit of Anders Larsen filed herein with motion to dismiss proceedings and that the matters set forth therein on information and belief with

(Testimony of B. L. Brooks)

reference to the Palo Verde Creamery Company, the correct name of which is Palo Verde Creamery, Inc., are incorrect and untrue.

That Palo Verde Creamery, Inc., is not owned and/or operated as a subsidiary corporation by Western Holstein Farms, Inc., or by any other company.

That Western Holstein Farms, Inc., does not sell, transport, and/or deliver milk in the state of California, which is produced in Los Angeles, or any other place, through Palo Verde Creamery, Inc.

That Palo Verde Creamery, Inc., at Blythe, California, is not located at or within the Los Angeles Sales Area as there defined in licenses Nos. 17 and 57. That said Palo Verde Creamery, Inc., does not sell, transport, and/or deliver milk to any place in the state of Arizona. That said Palo Verde Creamery, Inc., sells milk to one P. E. Woodson but that all of such sales are made to P. E. Woodson, delivered to P. E. Woodson, or to others on the order of said P. E. Woodson, at the plant of Palo Verde Creamery, Inc., in Blythe, California, and no other place. That said Palo Verde Creamery, Inc., does not operate in any way within the state of Arizona and has no permit or license to do or transact business within the state of Arizona.

That all milk bottled or sold in bottles or cases by Palo Verde Creamery, Inc., at Blythe, California, is produced by Palo Verde Creamery, Inc., from its own dairy herds located at Blythe, California, and at no other place.

B. Evidence for Defendants

(Testimony of Harry W. Berdie)

HARRY W. BERDIE, being duly sworn, testified by affidavit as follows:

I am a defendant and am sued herein as Regional Representative of the Licensing and Enforcement Section of the Agricultural Adjustment Administration of the United States Department of Agriculture. I severed my connection with the said Agricultural Adjustment Administration of the United States Department of Agriculture on or about the 26th day of February, 1934, and have not been since that time and am not now connected with said Administration in any manner whatsoever, and hold no official position at all under said Administration or under the milk license issued for the Los Angeles area or any of its agencies.

(Testimony of W. J. Kuhrt)

W. J. KUHRT, being duly sworn, testified by affidavit as follows:

That he was and now is the Chairman of the Los Angeles Milk Industry Board; that said Board had certain duties and functions under License No. 17 as prescribed therein, but that said functions did not include the exercise of any right, power or authority to enforce in any way any of the provisions of said License, and no such authority has at any time been attempted to be exercised by either the witness or by said Board.

That the original Bill of Complaint in this action was filed on or about the 11th day of January, 1934, and that

(Testimony of W. J. Kuhrt)

on or about the 15th day of January, 1934, without notice of the same to this affiant or to said Board, and without the requirements of a bond, this Court issued a temporary restraining order purporting to restrain this affiant and said Board and all of the defendant members thereof from enforcing or attempting to enforce any of the provisions of said License. That thereafter and after due notice said temporary restraining order was vacated on or about the 30th day of January, 1934. That subsequent to the vacation of said temporary restraining order, and up to and including the 31st day of May, 1934, this affiant and said Board continued as they had theretofore done to perform the functions prescribed by said License, but that neither this affiant nor said Board has at any time interfered or attempted to interfere with the business or property of the plaintiff, nor have they enforced or attempted to enforce any of the terms or provisions of said License No. 17. Said License No. 17 was terminated by the Serretary of Agriculture as on the 1st day of June, 1934, and issued and made effective in lieu thereof License No. 57, which License is now in effect in the Los Angeles Milk Shed or Sales Area. That said License No. 57 contains no provisions for the administering thereof by the said Los Angeles Milk Industry Board, and that since said 1st day of June, 1934, neither this affiant nor said Board have administered or attempted to administer any provisions of said License.

That said Board is inactive and dormant and that it has and exercises no power or authority of any kind

(Testimony of W. J. Kuhrt)

other than that of closing its accounts and disposing of its assets in accordance with instructions from the Secretary of Agriculture, and that upon the conclusion of these activities the resignations of the members thereof will be accepted and said Board will pass out of existence.

That according to affiants information and belief, on or about the 20th day of July, 1934, and prior to the filing of the motion for leave to file a supplemental Bill of Complaint, and prior to the issuance of a temporary restraining order herein, each, every and all of the plaintiffs in this proceeding sold, assigned and transferred their businesses and assets to other persons, firms or corporations, as follows:

Charles J. Kurtz, doing business as Golden West Creamery Company, to Mary Kurtz; Western Holstein Farms, Inc., a corporation, to Palo Verde Creamery, Inc.; Valley Dairy Company, Inc., a corporation, to Billiwhack Stock Farms, Ltd., and Lucerne Cream & Butter Company, a corporation, to Modern Food Company; and that none of said plaintiffs is now engaged in business in the territory included within the provisions of any license relating to the Los Angeles Area.

That according to affiant's information and belief, each, every and all of said plaintiffs have funds in their possession accumulated in accordance with the provisions of License No. 17, in which they had no right, title nor interest, but that said funds properly belonged to Milk Producers, Inc., a corporation.

(Testimony of O. R. Fuller)

O. R. FULLER, being duly sworn, testified by affidavit as follows:

That he is the duly elected, qualified and acting President of Milk Producers, Inc., a co-operative marketing association or corporation, one of the defendants in the above entitled action.

That according to affiant's information and belief, that on or about the 9th day of August, 1934, plaintiffs in this action asked leave of Court to file a supplemental Bill of Complaint, and for an injunction against said Milk Producers, Inc. That on said date the Court issued a temporary restraining order purporting to restrain said corporation and other defendants from enforcing and/or attempting to enforce any of the provisions of Milk License No. 17 and 57.

That under and by the provisions of said License No. 17, from the 20th day of November, 1933, to and including the 31st day of May, 1934, Milk Producers, Inc., was charged with the performance of and performed certain functions, but that said functions did not include the exercise of any right, power or authority to enforce in any way any of the provisions of said Licenses, and that no such authority has at any time been attempted to be exercised by said corporation.

That effective on the 1st day of June, 1934, the Secretary of Agriculture terminated License No. 17 and issued License No. 57 in lieu thereof, which said License is now in effect in the Los Angeles Milk Shed or Sales Area.

(Testimony of O. R. Fuller)

License No. 57 contains no provision for the exercise or any functions in connection with the administration thereof by Milk Producers, Inc., and that said Corporation has no authority of any kind thereunder other than that it is permitted to engage in the business of purchasing, processing, manufacturing and distributing dairy products. That at no time since June 1st, 1934, has said corporation exercised or attempted or threatened to exercise any power or authority of any kind under said License other than that hereinbefore described. That upon affiant's information and belief, each, every and all of said plaintiffs have funds in their possession accumulated in accordance with the provisions of License No. 17, in which they have no right, title or interest, but that said funds properly belonged to Milk Producers, Inc.; and that on or about the 19th day of July, 1934, Milk Producers, Inc., filed in the Superior Court for the County of Los Angeles, an action to recover from the plaintiff Lucerne Cream & Butter Company, the amount of approximately Eighteen Thousand (\$18,000.00) Dollars, being money had and received for the use and benefit of Milk Producers, Inc., and that said action is now pending but further prosecution thereof has been restrained by order of this Court.

That upon affiant's information and belief on or about the 28th day of July, 1934, the Secretary of Agriculture revoked the licenses under which all of the plaintiffs were engaged in the distribution of dairy products, and that on or about the 30th day of July, 1934, and prior to the filing of the motion for leave to file a supplemental

(Testimony of O. R. Fuller).

Bill of Complaint, and prior to the issuance of the temporary restraining order herein, each, every and all of the plaintiffs in this proceeding sold, assigned and transferred their businesses and assets to other persons, firms or corporations, and that none of said plaintiffs is now engaged in business in the territory included within the provisions of any licenses relating to the Los Angeles Area.

That by reason of the transfers of the businesses and assets of said plaintiffs, the continuance of the temporary restraining order issued herein may prevent further prosecution of said action against the plaintiff, Lucerne Cream & Butter Company, deprive the plaintiff in that action of its right to determination of the questions involved, and result in inability to collect the same if determined by said Superior Court to be due and payable.

(Testimony of Earl Maharg)

EARL MAHARG, being duly sworn, testified by affidavit as follows:

That he is the Secretary-Manager of California Milk Producers Association, a co-operative marketing association or corporation, a Director of Milk Producers, Inc., a member of the Los Angeles Milk Industry Board and one of the defendants in this action.

That he is familiar with the general nature and purposes of the proceedings relating to the dairy industry now pending before this Court and a certain action on the part of Milk Producers, Inc., against Lucerne Cream

(Testimony of Earl Maharg)

& Butter Company pending before the Superior Court in Los Angeles County, State of California, and that said action instituted by Milk Producers, Inc., in said Superior Court is designed solely for the purpose of attempting to recover monies withheld by said defendant from producers from whom it has purchased milk, and held by the defendant in said action for the use and benefit of Milk Producers, Inc. That said Superior Court action is not in any way an attempt to enforce the provisions of any licenses issued by the Secretary of Agriculture; that the complaint in said action is against Lucerne Cream & Butter Company and Safeway Stores, Inc., and the demands thereof are set out in paragraphs V and VI thereof, which reads as follows:

“V

“That within one year last past, and prior to commencement of this action, during the period from November 20, 1933, to May 31, 1934, in the City of Los Angeles, County of Los Angeles, State of California, the defendants, and each of them became indebted to the plaintiff in the sum of EIGHTEEN THOUSAND FOUR HUNDRED FIFTY FOUR AND ONE/100 (\$18,454.01) DOLLARS for money had and received by the defendants, and each of them, to and for the use and benefit of the plaintiff.

VI.

That demand has been made upon the defendants, and each of them, for payment of said sum, but no part thereof has been paid, and there is now due, owing and unpaid from the defendants to the plain-

(Testimony of Earl Maharg)

tiff the sum of EIGHTEEN THOUSAND FOUR HUNDRED FIFTY FOUR AND ONE/100 (\$18,545.01) DOLLARS.”

That neither Milk Producers, Inc., nor the Los Angeles Milk Industry Board have or have had at any time any authority whatever to enforce any provisions of any license issued by the Secretary of Agriculture relating to the distribution of dairy products, nor have they or any member of said Board or any officer or director of said corporation enforced or attempted to enforce the same.

That as affiant is informed and believes, the financial obligations of the plaintiffs to Milk Producers, Inc., aggregate Fifty-two Thousand (\$52,000.00) Dollars, and that each of said plaintiffs on or about the 30th day of July, 1934, transferred to other persons, firms or corporations, all of their assets and businesses without compliance with the provisions of Section 3440 of the Civil Code of the State of California; that in the case of at least one of the plaintiffs such transfer was made to a corporation domiciled outside of the State of California.

That any restraint upon Milk Producers, Inc., in its prosecution of the action against said plaintiff corporations, threatens to deprive Milk Producers, Inc., of certain funds to which they are rightfully entitled.

That under License No. 17 Milk Producers, Inc. and the Los Angeles Milk Industry Board were authorized to exercise certain administrative functions; that said license was terminated by the Secretary of Agriculture

(Testimony of Earl Maharg)

on May 31st, 1934; that effective June 1st, 1934, License No. 57 became effective. That in the provisions of License No. 57 neither said corporation nor said Board are authorized to exercise any power or authority whatever.

(Testimony of Anders Larsen)

ANDERS LARSEN, being first duly sworn, testified by affidavit as follows:

That he is one of the defendants named in the Supplemental Bill of Complaint; that he is now, and has been since the 21st day of January, 1934, the officer in Charge of the Los Angeles Office of the Field Investigation Section of the Agricultural Adjustment Administration, and that he has charge of investigation of violations of License No. 57 in the Los Angeles Area and that as such officer he and persons working under him are in constant and close association with milk producers in the Los Angeles Area as well as with milk distributors operating under said license; that he knows the plaintiffs to the above entitled action.

That he has received information from many persons, particularly, milk producers who sell their milk to each of the plaintiffs, and as to the manner in which said plaintiffs were conducting their business prior to the 30th day of July, 1934, that on information and belief derived from such sources, that the plaintiffs, at least three of them, up to and including the 28th day of July, 1934, conducted their business in accordance with the

(Testimony of Anders Larsen)

said licenses, Nos. 17 and 57, in that plaintiffs paid to the producers the price fixed by said licenses less deductions provided under said licenses to be deducted and paid in accordance therewith to the Milk Producers, Inc., the Milk Industry Board, and the Market Administrator. That further, on information and belief, the plaintiffs, at least three of them, still had in their possession practically all monies deducted from producers who sold milk to them, and each of them, in accordance with said licenses, and each of them, and have not paid the same to Milk Producers, Inc., the Milk Industry Board, or the Market Administrator.

That on information and belief, several producers from whom such money was withheld by said plaintiffs, consented thereto and did not object to such withholding but to the contrary, desired that the money be withheld and paid over to the Milk Producers, Inc., the Milk Industry Board and the Market Administrator.

That on information and belief, plaintiffs Western Holstein Farms, Inc., owns and operates a subsidiary corporation known as the Palo Verde Creamery Company; that through and in the name of said Palo Verde Creamery Company, Western Holstein Farms, Inc., sells, transports and delivers milk in the state of Arizona which is produced in the Los Angeles Sales Area; that said milk is transported by Western Truck Lines, Ltd., of Los Angeles, California, which company is in the habit of transporting milk for said Palo Verde Creamery Company and said plaintiff Western Holstein Farms, Inc., as far east as one-half way between Blythe, Cali-

(Testimony of Anders Larsen)

fornia, and Phoenix, Arizona; that butter is handled by the same parties in the same manner; that all such milk is from Los Angeles and is sent to Blythe, California, where it is bottled, and from which point it is distributed and at which place cream is used for churning butter. That distribution from the creamery at Blythe, California, is made to many points in Arizona, and among other customers supplied by said Palo Verde Creamery Company is one P. E. Woodson of Quartzsite, Arizona; that said P. E. Woodson furnished photostatic copies of statements rendered by Palo Verde Creamery Company to him for milk and butter and other products he had purchased from said Palo Verde Creamery; that said statements were rendered on billheads which contained the following printed matter:

“Palo Verde Creamery, Blythe, California.”

and were all to P. E. Woodson, Quartzsite, and contained practically nothing but milk and butter and showed total purchases as follows:

Week ending Jan. 1, 1934	36.44
Month of Feb. 1, 1934	35.17
Month of Mar. 1, 1934	267.94
Month of April, 1, 1934	315.36
Month of May 1, 1934	305.35
Month of June 1, 1934	295.08
Week ending July 1, 1934	292.69

That on information and belief the Lucerne Cream and Butter Company is a subsidiary of the Safeway Stores, Inc., and wholly owned by them; that as such

(Testimony of Anders Larsen)

subsidiary, said plaintiff Lucerne Cream and Butter Company purchases butter and milk which is supplied to the many stores operated by said Safeway Stores, Inc., that in particular, said plaintiff during the year 1933, shipped from the state of Idaho to the city of Los Angeles, a total of 4,086,664 pounds of butter, and during the year 1934, shipped from the state of Idaho to Los Angeles, 2,209,056 pounds of butter, and that the Modern Food Company is the wholly owned subsidiary of said Safeway Stores, Inc., and to whom the said plaintiffs Lucerne Cream and Butter Company transferred its business after its license was revoked on the 28th day of July, 1934, and shipped into Los Angeles since said date a total of 364,350 pounds of butter from Idaho and 24,397 pounds from Denver, Colorado; That a schedule of car numbers, weight and freight bill numbers showing such shipment was supplied to the court which showed shipments beginning on December 31, 1932, to and including July 27, 1934, showing the total weights as above set out, and, further, a schedule of shipments made by the Modern Food Company beginning August 7, 1934, and ending September 7, 1934, showing the total weights as above set out.

(Testimony of M. P. Monson)

M. P. MONSON, being duly sworn, testified by affidavit as follows:

That he is an Assistant Investigator for the Agricultural Adjustment Administration of the United States

(Testimony of M. P. Monson)

Department of Agriculture; that he has investigated the activities of the Lucerne Cream & Butter Company, one of the plaintiffs in the above entitled action, and on information and belief that said Lucerne Cream & Butter Company is a wholly owned subsidiary of Safeway Stores, Inc., a California corporation, which is in turn a wholly owned subsidiary of Safeway Stores, Inc., a Maryland corporation; that the information on which affiant testifies was secured from employees of said plaintiff and from other persons in similar industries and from credit reports and reputation generally.

That the said plaintiff, Lucerne Cream & Butter Company, operates generally as an acquiring and distributing subsidiary of Safeway Stores, Inc., for milk and its products, and that said operations consist of the purchase and distribution of whole milk, of the operation of creameries, the churning of butter, the canning of condensed milk and the distribution of said products to the various subsidiaries of said Safeway Stores, Inc., a Maryland corporation, to the number of about seventeen, and of the sale of the same to other wholesalers, retailers and consumers, and includes the transportation of said products in many cases from one state to another. The operations of said plaintiffs extend over the states of California, Nevada, Arizona, Oregon, Washington, Idaho and many others.

That the affiant learned that said plaintiff shipped large quantities of butter into Los Angeles from the State of Idaho, and checked the records of said shipments and made abstracts thereof as set forth in the tes-

(Testimony of M. P. Monson)

timony of Anders Larsen, and that such shipments were continued by said Lucerne Cream & Butter Company up to and including the 27th day of July, 1934. That on or about the 28th day of July, 1934, the license to said Lucerne Cream & Butter Company, issued by the Secretary of Agriculture, was cancelled by said Secretary, and that on and after said dates shipments of butter from the same source in Idaho were continued to the City of Los Angeles by the Modern Food Company, another subsidiary of said Safeway Stores, Inc.

That on further investigation of said Lucerne Cream & Butter Company affiant learned that it operated a creamery at Hanford, California, where evaporated milk is canned. That he visited said plant, watched the operations thereof and learned while there that three brands of evaporated milk were canned, and was informed by the plant Superintendent in said creamery that the said three brands, respectively, were disposed of in the following manner:

“Maximum” brand is sold through the Safeway, Piggly Wiggly and Pay‘N’Takit Stores.

“McMarr” brand is sold in the stores operated by the McMarr Division.

“Lucerne” brand is packed and distributed by the Western States Wholesale Grocery, and other wholesale units operating through the Safeway system for distribution to independent grocers who obtained their supplies through these cash and carry wholesale units operated by the Safeway system.

(Testimony of M. P. Monson)

That he is informed by said Superintendent in said plant it received from producers for the purpose of evaporating and canning a total of 120,000 pounds of milk daily, and from this milk 1,200 cases is canned each day.

The railroad records of shipments from said plant were checked and a schedule made thereof as to shipments made to points without the State of California; that according to such records said plaintiff has shipped to points without the State of California, over the Southern Pacific Railroad Company, from Hanford, California, a total of 3,094,799 pounds of canned milk, and that in addition thereto, according to information secured from said Superintendent, many shipments of canned milk were made to San Francisco for the United States Army for use at various points on the Pacific, including the Phillipine Islands, the Hawaiian Islands and other places, and that in addition thereto canned milk was shipped to San Diego and to the United States Naval Service and for the United States Marines, to be used by them at all points on the Pacific Coast, and that milk was also shipped to Safeway Stores operating in the Hawaiian Islands, and that none of such shipments were reflected in the schedule made from said Railroad records, as in all such shipments the Railroad records show a shipment to San Francisco and San Diego.

That in line with his duties affiant also investigated plaintiff Western Holstein Farms, Inc., and on examination of the State Corporation records found that there was also a Western Farms, Inc., and a Palo Verde Creamery, Inc., and that Palo Verde Creamery, Inc.,

(Testimony of M. P. Monson)

was the same corporation as Western Farms, Inc., the said Western Farms, Inc., having changed its name to Palo Verde Creamery, Inc.; he also found the Western Holstein Farms, Inc., and Western Farms, Inc., had the same directors and the same stock ownership. That the Western Holstein Farms, Inc., operated in Los Angeles, where it purchased and distributed whole milk and other operations incidental thereto, and that the Palo Verde Creamery, Inc., operates a creamery at Blythe, California; that *the* visited the creamery at Blythe and watched the delivery of milk thereto and found the same came from Western Holstein Farms, Inc., at Los Angeles, and was informed by the Manager of said Creamery that such was the case.

That he saw the milk being bottled in the creamery and observed that the bottles in which it was being placed were stamped with the name "Western Farms", which were the same bottles as used by the Western Holstein Farms, Inc., in Los Angeles, and that he was informed by said Manager of said creamery that he also churned butter from milk and from cream sent to him from Los Angeles. That large quantities of whole milk and butter were sent from the said creamery by the Palo Verde Creamery, Inc., to many points in the State of Arizona, including among others, Quartzsite, Arizona, at which place one P. E. Woodson was a regular customer and furnished affiant with receipted statements from Palo Verde Creamery, Inc., which were attached to the affidavit of Anders Larsen.

(Testimony of M. P. Monson)

That from investigation and observation, the operations at Los Angeles of Western Holstein Farms, Inc., and Western Farms, Inc., are conducted as by the same company or one operating unit, using the same equipment, the same trade names, the same bottles and cases and the same equipment for transportation between Blythe and Los Angeles.

(Testimony of Louis H. Decker)

LOUIS H. DECKER, being duly sworn, testified by affidavit as follows:

That he lives at 11615 Lewis Street, Lynwood, California, and that at present operates a dairy at 12606 Bullis Road, near Lynwood, California, and has operated the same since April 19th, 1934. That the said dairy has consisted of seventy-four or seventy-five cows and that during all of said period the milk produced from said dairy has all been sold to Western Holstein Farms, Inc., and was being sold to it at the time he took over the management of said dairy, and on information and belief had been sold to said company for a long period prior thereto.

That since he has been managing said dairy said Western Holstein Farms, Inc., has accepted milk delivered to it as aforesaid, and has paid him for said milk by check, "On account Milk Shipments", and that affiant has asked said Western Holstein Farms, Inc., for an accounting as to the basis of said payments and has been informed orally of the manner in which said payments

(Testimony of Louis H. Decker)

were made, which in each instance was in accordance with the requirements of the Federal Milk License and so stated by them, and that such information was received from George O. Stoddard and B. A. Boyle.

That for part of the period covered he figured the amount of money paid to him as against the amount that should have been paid in accordance with the milk license, and found such payments in accordance with such license schedule, but that he has not computed such payments for the entire period since he has operated the dairy. That in accordance with his understanding, such payments were made after deducting and holding out monies required under the license to be retained and held out and paid over to the Milk Administrator or the person designated by him, and affiant accepted said payments on that basis.

That he, on the 5th day of July, 1934, in writing authorized said Western Holstein Farms, Inc., to make such deductions in accordance with said license, which authorization has at all times been and still is in effect.

That on or about the 21st day of June, 1934, plaintiff, Western Holstein Farms, Inc., through the truck driver collecting milk from affiant, delivered to affiant a letter in words and figures as follows:

“Los Angeles
3402 Avalon Blvd.,
June 21-1934.

L. H. Decker

Dear Sir,-

The Government Auditors are at our plant checking over our records for the purpose of establishing a fair

(Testimony of Louis H. Decker)

base for each of our shippers. With this thought in mind we should like to have you bring to the office today all of the information you have in regard to the replacement of cows or the purchase of new ones. We would like to know whether these cows were purchased from herds with established shipping rights or if they were purchased from herds which would constitute new production. This applies to the period from November 20th, 1933, to June 1st, 1934.

It will be very much to your advantage to get this information accurately and must be in our office today.

Yours truly,

WESTERN HOLSTEIN FARMS INC.,

BY (Signed) H. J. BOYLE"

and that immediately thereafter, affiant furnished Western Holstein Farms, Inc., the information requested in said letter.

(Testimony of E. W. Gaumnitz)

E. W. GAUMNITZ, being first duly sworn, testified by affidavit as follows:

I am Economic Adviser to the Dairy Section of the Agricultural Adjustment Administration and have knowledge of the facts hereinafter set forth.

My previous economic training and experience is as follows:

Graduated University of Minnesota, 1921, degree of B.S., and subsequently received degrees of M.A. and

(Testimony of E. W. Gaumnitz)

Ph.D.; Instructor and Assistant Professor of Agricultural Economics, University of Minnesota, 1921-1925; Agricultural Economist, Dairy Production, Iowa State College, 1925-1928; Agricultural Economist, California State Department of Agriculture, 1928-1930; Agricultural Economist, Market Research in Dairy Products, Bureau of Agricultural Economics, U. S. Department of Agriculture, 1930-1933; Economic Adviser, Dairy Section, Agricultural Adjustment Administration, since May, 1933.

I. ECONOMIC STATUS OF MILK PRODUCERS AS A RESULT OF THE DEPRESSION.

Throughout the country, a wide disparity exists between the prices received by farmers for dairy products, and the prices paid by said producers for commodities purchased. In July, 1934, the prices received by farmers for dairy products in terms of purchasing power were but 63 percent of the prices received for said products during the period August, 1909 to July, 1914 (the base period specified in the Agricultural Adjustment Act, pursuant to the provisions of which the Los Angeles License was formulated.)

The average farm prices per hundredweight in money (not purchasing power) received by California producers for milk sold at wholesale during the base period, August, 1909 to July, 1914, during the period 1929 to 1933, inclusive, and during the first seven months of 1934, respectively, were as follows:

(Testimony of E. W. Gaumnitz)

	California
Base Period (August, 1909 to July, 1914)	\$1.81
1929	2.68
1930	2.48
1931	2.06
1932	1.66
1933	1.52
1934	
January	1.50
February	1.50
March	1.60
April	1.50
May	1.50
June	1.50
July	1.60
Average, seven months' period	1.53

The average dealer's buying prices in Los Angeles, f.o.b. city for Class I milk having an average butterfat content of 4.0 percent, during the period 1929 to 1933, inclusive, and during the first seven months of 1934, respectively, were as follows:

1929	\$3.56
1930	3.38
1931	2.84
1932	2.09
1933	1.98
1934	
January	2.05
February	2.05
March	2.05

(Testimony of E. W. Gaumnitz)

April	2.05
May	2.05
June	2.21
July	2.21
Average first seven months of 1934	2.10

The following table indicates the gross income received by farmers for milk produced on farms in California, and in the United States, for the years 1929 and 1932, respectively.

	California	United States
1929	\$107,427,000	\$2,322,553,000
1932	69,395,000	1,260,424,000

The foregoing figures indicate a decline in gross income from milk between 1929 and 1932 of 35.4 percent in California, and 46 percent in the United States.

The decline in the income to the dairy farmer from his sale of milk has been caused in part by the widespread economic depression which has reduced the price which consumers were willing or able to pay for milk. The reduction in the demand for milk has led to unwarranted price cutting, extended price wars, and other methods of destructive competition among distributors. In the course of such price wars distributors reduced the price paid by them to the farmers for milk purchased below the point justified by the existing supply and demand situation. Such unwarranted price cutting, if continued, would ultimately result in a shortage of milk for fluid consumption, since some producers and distributors who were needed to supply the market with normal fluid milk requirements

(Testimony of E. W. Gaumnitz)

would be forced out of business. The practice of price cutting thus operates to the detriment of producers, distributors and consumers. The disastrous decline in the price received by farmers for milk has led to strikes and violence in numerous metropolitan milk sheds. Between June, 1933 and February, 1934 such producer strikes occurred in the states of Illinois, Connecticut, Pennsylvania and New York.

The issuance of the Los Angeles Milk License is part of a comprehensive, nation-wide plan being put into effect by the Secretary of Agriculture pursuant to the powers vested in him by the Agricultural Adjustment Act for the purpose of restoring the purchasing power of the dairy farmer by the gradual adjustment of such purchasing power to its pre-war level during the period 1909-1914. Licenses for milk similar to the Los Angeles License have been issued and are now in effect in the following forty important metropolitan areas: Chicago, Illinois; Alameda County, California; Philadelphia, Pennsylvania; Baltimore, Maryland; San Diego, California; Des Moines, Iowa; Minneapolis and St. Paul, Minnesota; Omaha, Nebraska and Council Bluffs, Iowa; Evansville, Indiana; St. Louis, Missouri; Boston, Massachusetts; Kansas City, Missouri and Kansas City, Kansas; Lincoln, Nebraska; Sioux City, Iowa; Wichita, Kansas; Indianapolis, Indiana; Providence, Rhode Island; Newport, Rhode Island; Fall River, Massachusetts; New Bedford, Massachusetts; Detroit, Michigan; Richmond, Virginia; Lexington, Kentucky; Leavenworth, Kansas; Quad Cities, Iowa and Illinois; Louisville, Kentucky; Oklahoma City, Oklahoma; Fort Wayne, Indiana; Tulsa, Oklahoma;

(Testimony of E. W. Gaumnitz)

Savannah, Georgia; and the following areas in Michigan: Ann Arbor, Battle Creek, Bay City, Flint, Grand Rapids, Kalamazoo, Lansing, Port Huron, Saginaw and Muskegon.

Additional licenses are now being formulated and will shortly be issued by the Secretary.

II. RELATIVE IMPORTANCE OF THE DAIRY FARMING INDUSTRY.

The following table indicates the proportion of the total cash income of farmers from farm production in California, and in the United States for the year 1932, represented by the cash income from milk production:

	California	United States
Total Cash Farm Income	\$375,525,000	\$4,199,447,000
Cash Farm Income from		
Dairy Products	65,484,000	985,099,000
Percent Cash Farm Income from Dairy Products is of		
Total Cash Farm Income	17.4	25.5

During the year 1931, the gross income of all farmers in the United States derived from the sale of dairy products was \$1,614,394,000. This sum may be compared with the total value of products of the following industries during the same year:

Motor Vehicles (not including motor-cycles)	\$1,567,526,000
Steel Works and Rolling Mills	1,402,843,000
Lumber and Timber Products not elsewhere Classified	443,628,000

(Testimony of E. W. Gaumnitz)

III. THE PARITY PRICE.

The parity price (as defined in the Agricultural Adjustment Act) which California producers should have received in October, 1933 (the month before which the first license in question went into effect) for milk sold at wholesale was \$2.13 per hundredweight.

This parity price is computed in the following manner: The average farm price of \$1.81 received by California producers for milk sold at wholesale during the base period, August 1909 to July 1914, is adjusted: (1) by applying thereto the October 1933 index of prices paid by farmers for commodities bought, being 116 percent of the average of such prices during the base period, and (2) by applying to the resulting figure of \$2.10 the index number of seasonal variation in prices, the October price being normally 1.3 percent above the average monthly price in California.

The parity price which California producers should have received in July, 1934, was \$2.12 per hundredweight and is computed in a manner similar to that outlined above in regard to the October 1933 parity price.

These parity prices, so computed, are probably lower than the true parity prices for producers supplying the Los Angeles Sales Area, for two reasons: (a) sanitary regulations adopted since the base period have increased the relative cost of production and improved the quality of the commodity under consideration, thereby justifying a higher parity price; (b) the computation is based upon the prices to California producers generally, not merely to producers supplying the Los Angeles Sales Area, who

(Testimony of E. W. Gaumnitz)

presumably, by virtue of their location advantage, were receiving a higher price during the base period than farmers generally in the State of California.

The dealers' buying price at Los Angeles, f.o.b. city, for Class I milk testing 4.0 percent butterfat, when adjusted to parity levels as of October 1933, was \$3.04 per hundredweight.

This parity price is computed in the following manner: The average base period (August 1909 to July 1914) dealers' buying price per hundredweight, f.o.b. city, for milk testing 4.0 percent butterfat is adjusted: (1) by applying thereto the October 1933 index of prices paid by farmers for commodities bought, being 116 percent of the average of such prices during the base period, and (2) by applying to the resulting figure of \$3.00 the index of seasonal variation in prices of 101.3, the October price for this class of milk, being normally 1.3 percent above the average of such prices for the year.

The dealers' buying price for such milk when adjusted to parity levels as of July 1934 was \$3.09 per hundredweight.

IV. RELATIONSHIPS BETWEEN THE PRICES RECEIVED BY FARMERS FOR MILK IN DIFFERENT USES, AND INTER-MARKET PRICE RELATIONSHIPS OF MILK PRODUCTS.

A. Utilization of milk in the United States.

The milk produced in the United States is distributed among several uses, such as (1) milk for consumption as fluid milk, (2) milk for consumption as fluid cream,

(Testimony of E. W. Gaumnitz)

and (3) milk for conversion into and consumption as (a) butter, (b) cheese, (c) condensed and evaporated milk, (d) ice cream, (e) powdered milk and (f) etc.

The following figures indicate the volume of milk and the butterfat content of such milk utilized in specified manufactured products, and for consumption as milk in the United States during the year 1932.*

Product	1/	2/
	Whole Milk Used 1000 lbs.	Fat in Milk Used 1000 lbs.
Factory product ^{2/}		
Butter, creamery and whey	34,386,162	1,369,389
Cheese, American (whole and part skim)	3,801,107	136,534
Cheese, other than American, and cottage, pot and bakers'	1,082,352	36,667
Evaporated milk (whole)	3,611,101	132,361
Condensed milk (whole)	247,182	9,085
Ice cream (factory)	2,322,998	90,068
Powdered cream	1,553	61

1/ Based on the quantities of milk and cream reported as being received for use in these products. In addition, some fat remains in skim milk on farms, some is lost in spillage, stickage, etc. before being delivered, and some is excluded through rounding of fractional weights and tests upon delivery.

2/ These data differ in several respects from some published prior to November, 1932. The estimates of milk and butterfat required per pound of product are based chiefly on reports received for 1930 and 1931 showing quantities of milk and cream received by plants and the quantities of products made. Allowance has been made for duplication, principally in fat recovered from whey and in the use of such manufactured products as butter and evaporated or condensed milk in ice cream. It has been assumed that milk and cream used in ice cream made in homes and in small establishments not reporting as factories is included as consumption as fluid milk or cream.

(Testimony of E. W. Gaumnitz)

Powdered milk (whole)	90,808	3,479
Malted milk	35,069	1,346
	<hr/>	<hr/>
Totals used for factory products	45,578,332	1,778,990
Butterfat from whey cream	340,436	13,599
Butterfat from butter, etc. used in ice cream	482,964	18,739
	<hr/>	<hr/>
Net used for factory products	44,754,932	1,746,652
Milk used by nonfarm ^{3/} popula- tion	31,991,461	1,225,273

^{3/}The quantities shown exclude consumption by the urban farm population. The quantities of milk here shown as consumed are those indicated by reports from local Boards of Health. Current estimation of sales of milk and cream from farms and current estimates of milk production by cows not on farms, if confirmed by further study, would indicate a lower level of milk consumption in the South, particularly in the South Atlantic States.

*Source: United States Department of Agriculture, Bureau of Agricultural Economics.

The following table indicates the proportion of the total milk used for fluid milk and for manufactured dairy products that was utilized in each product during the year 1932:

Product	Percentage of Total Milk Used in Each Product
Factory product	
Butter, creamery and whey	44.4
Cheese, American (whole and part skim)	5.0
Cheese, other than American, and cottage, pot and bakers	1.4
Evaporated milk (whole)	4.7
Condensed milk (whole)	.3

(Testimony of E. W. Gaumnitz)

Ice cream (factory) ^{1/}	2.4
Powdered cream	*
Powdered milk (whole)	.1
Malted milk	*
Net used for factory products ^{1/}	58.3
Milk used by non-farm population	41.7
Total	100.0

^{1/} Allowing for duplication resulting from inclusion of butterfat from whey cream used in butter and butterfat from butter, etc., used in ice cream.

*Less than one-tenth of one percent.

The demand for all milk is derived from the demand for milk in different uses. Milk is distributed among the different uses noted above, and the relative volume entering the various uses fluctuates according to changes in relative prices of the finished products engendered by changing demand conditions for the various products. Any activity that tends to establish and maintain normal relationships between prices of the various products and that tends to raise and maintain the price of butterfat in one or more of its major uses, also tends to stabilize prices received by producers for milk in all uses.

B. Production of specified dairy products in major producing states.

The milk utilized in the manner indicated in the foregoing table is produced and processed in highly concentrated producing areas. This fact becomes evident upon consideration of the volume of production of specified manufactured products which is produced in major producing states, indicated in the following tables.

(Testimony of E. W. Gaumnitz)

The following table indicates the proportion of the total United States production of creamery butter in 1932 that was produced in the major producing states of Iowa, Minnesota, Nebraska and Wisconsin:

State	Amount (pounds)	Percentage of U. S. Total
Iowa	219,531,000	13.0
Minnesota	281,659,000	16.6
Nebraska	85,660,000	5.1
Wisconsin	170,339,000	10.1
Total Four States	757,189,000	44.8
United States	1,694,132,000	100.0

*Source: U. S. Department of Agriculture, Bureau of Agricultural Economics, Division of Dairy and Poultry Products.

The foregoing figures indicate that 44.8 percent of the creamery butter manufactured in the United States was produced in the states of Iowa, Minnesota, Nebraska and Wisconsin.

The following table indicates the proportion of total production of cheese in the United States in the year 1932 that was produced in Wisconsin and New York:*

State	Amount (pounds)	Percentage of U. S. Total
Wisconsin	302,439	51.3
New York	78,161	13.3
United States	587,627	100.0

*Source: U. S. Department of Agriculture, Bureau of Agricultural Economics, Division of Dairy and Poultry Products.

The foregoing figures indicate that 64.8 percent of the cheese produced in the United States in 1932 was produced in the states of Wisconsin and New York.

(Testimony of E. W. Gaumnitz)

The following table indicates the production of evaporated milk in 1932 by specified states and the proportion such production was of total United States production of evaporated milk:*

State	Amount (1000 pounds)	Percentage of U. S Total
Wisconsin	629,641	40.1
New York	99,341	6.3
California	203,554	13.0
Illinois	87,260	5.6
Ohio	80,300	5.1
United States	1,570,612	100.0

*Source: U. S. Department of Agriculture, Bureau of Agricultural Economics, Division of Dairy and Poultry Products.

The foregoing figures indicate that the states of Wisconsin and California, produced 53.1 percent of the total evaporated milk produced in the United States in 1932.

Manufactured dairy products, to a lesser extent cream, and to a still lesser extent fluid milk, are readily storable and transportable. In the case of cream and manufactured products, this factor of storability and transportability is reflected in the free flow of these products between markets, whereas high transportation costs, engendered by the bulk and perishability of fluid milk, render it uneconomical to transport fluid milk long distances. The free flow of these products between markets results in inter-market price relationships of such nature that the prices of these products tend to vary between markets only by the amount of transportation

(Testimony of E. W. Gaumnitz)

costs from one market to the next, plus the necessary additional handling charges other than transportation. In addition to the foregoing, a considerable volume of dairy products, chiefly evaporated milk, is exported from the United States yearly, and a rather large volume of cheese, especially Swiss and Italian varieties, is imported yearly.

The above generalization are substantiated by a consideration of the (1) receipts of milk, cream, butter and other dairy products at specified markets, and (2) between prices in different markets.

C. Receipts of specified dairy products at the principal markets.

The following table indicates the receipts of cream at Chicago and the metropolitan area, by states of origin, for the year 1933:*

State	Receipts of Cream 40 Quart Units
Arkansas	6,518
Illinois	158,014
Indiana	19,296
Iowa	6,160
Kansas	122
Kentucky	8,320
Michigan	3,104
Mississippi	1
Missouri	26,382
Ohio	5,157
Oklahoma	180
Tennessee	248

(Testimony of E. W. Gaumnitz)

Texas	2
Wisconsin	314,817
Total	<hr/> 548,323

*Source: United States Department of Agriculture, Bureau of Agricultural Economics.

The following table indicates the receipts of cream and milk at New York City and the metropolitan area by states of origin for the year 1933:*

State	Receipts	
	Milk 40 Quart Units	Cream 40 Quart Units
Connecticut	231,895	6,707
Delaware	34,887	3,292
Illinois	.....	725
Indiana	2,648	17,355
Maryland	153,104	670
Massachusetts	133,206	868
Michigan	.....	642
Missouri	.....	800
New Jersey	3,337,760	23,474
New York	22,383,523	1,135,418
Ohio	4,910	30,248
Pennsylvania	5,383,028	200,578
Tennessee	496	5,600
Texas	.....	200
Vermont	1,376,316	121,346
West Virginia	.....	200
Wisconsin	.....	25,338
Total	<hr/> 33,041,773	<hr/> 1,573,461

*Source: United States Department of Agriculture, Bureau of Agricultural Economics.

(Testimony of E. W. Gaumnitz)

The following table indicates the receipts of milk and cream at Boston and the metropolitan area by states of origin during the year 1933:*

State	Milk 40 Quart Units	Cream 40 Quart Units
Connecticut	.....	200
Illinois	.....	3,950
Indiana	.....	22,563
Kansas	.....	7,975
Maine	769,494	52,626
Maryland	.....	1,700
Massachusetts	544,091	1,509
Michigan	.....	45,302
Minnesota	.....	21,882
Missouri	.....	30,703
New Hampshire	670,569	19,954
New York	359,366	23,325
Ohio	.....	15,435
Rhode Island	1,883	73
Tennessee	.....	11,383
Vermont	3,376,147	228,457
Wisconsin	.....	52,162
Pennsylvania	.....	207
Total	5,721,550	539,406

*Source: U. S. Department of Agriculture, Bureau of Agricultural Economics, Division of Dairy and Poultry Products.

(Testimony of E. W. Gaumnitz)

The following table indicates the receipts of milk and cream at Philadelphia, and the metropolitan area, by states of origin during the year 1933:*

State	Milk 40 Quart Units	Cream 40 Quart Units
Delaware	517,018	3,178
District of Columbia	.....	150
Illinois	.....	2,263
Indiana	340	44,434
Maryland	847,706	34,202
Michigan	.....	1,400
Minnesota	.....	5,925
Missouri	.....	4,009
New Jersey	562,933	2,032
New York	.....	2,121
Ohio	.....	8,940
Pennsylvania	4,844,597	69,497
Texas	.....	200
Virginia	5,548	4,434
West Virginia	9,367	2,620
Wisconsin	122	83,172
<hr/> Total	<hr/> 6,787,631	<hr/> 268,577

*Source: U. S. Department of Agriculture, Bureau of Agricultural Economics, Division of Dairy and Poultry Products.

(Testimony of E. W. Gaumnitz)

The following table indicates the receipts of butter (gross pounds) at four markets by states of origin for the year 1933:*

	New York	Chicago	Philadelphia	Boston
Alabama	1,392	239	.....	.....
Arkansas	129,101	1,656,263	21,942	6,650
California	.....	42,359	.....	.....
Colorado	64,566	761,176	.....	15,335
Connecticut	3,038	.....	.....	.....
Delaware	400	.....	6,643	.....
District of Columbia	775	.....	.....	.....
Florida	95	.....	.....	.....
Georgia	2,445	.....	1,565	.....
Idaho	21,600	284,407	.....	.....
Illinois	15,778,061	17,846,325	2,750,937	12,459,789
Indiana	5,633,365	5,620,280	2,207,791	2,197,016
Iowa	83,752,200	46,620,767	10,317,776	6,895,596
Kansas	15,582,304	25,953,696	303,130	801,640
Kentucky	870,231	1,321,322	778,365	125,187

(Testimony of E. W. Gaumnitz)

	New York	Chicago	Philadelphia	Boston
Louisiana	20,092	.....	.....	.....
Maine	.....	.....	.....	20,095
Maryland	1,062	.....	143,180	.....
Massachusetts	197	325	.....	209,612
Michigan	7,665,692	5,924,179	173,718	697,962
Minnesota	82,537,383	27,362,114	55,563,328	30,916,517
Mississippi	572,253	440,948	279,792	141,428
Missouri	5,849,702	18,480,629	2,974,592	4,127,212
Montana	5,092	60,050	.....	.....
Nebraska	33,870,758	18,281,379	6,292,223	4,547,053
New Hampshire	.....	.....	.....	957
New Jersey	29,922	.....	.....	520
New Mexico	.....	199,021	.....	.....
New York	4,756,528	41,120	121,548	542,190
North Carolina	8,605	.....	13,973	.....
North Dakota	4,612,840	2,244,264	975,997	8,178,353
Ohio	7,575,997	113,815	961,749	3,297,162

(Testimony of E. W. Gaumnitz)

Oklahoma	1,927,593	6,930,879	342,638	1,979,300
Pennsylvania	1,426,374	1,816	355,894	.....
Rhode Island	.....	.....	.....	1,350
South Carolina	14	.....	700	.....
South Dakota	2,251,445	15,045,363	1,029,752	5,452,793
Tennessee	814,463	479,013	1,271,906	.....
Texas	2,317,542	5,049,965	1,098,509	292,814
Utah	31,800	.....	.....	.....
Vermont	22,245	.....	.....	126,051
Virginia	363,608	.....	1,039,939	.....
Washington	62,525	.....	360	.....
West Virginia	192,010	.....	70,747	.....
Wisconsin	11,692,037	60,226,871	3,287,957	5,242,400
Wyoming	10,517	12,803	.....	.....
Canada	680	.....	.....	.....
Total	290,448,531	261,001,289	92,386,651	88,274,982

*Source: U. S. Department of Agriculture, Bureau of Agricultural Economics.

(Testimony of E. W. Gaumnitz)

The following table indicates the receipts of cheese (gross pounds) at four principal markets, by states of origin, during the year 1933.*

1933	New York	Chicago	Philadelphia	Boston	Total 4 Markets
Alabama	.....	370	.....	.....	370
Arizona	.....	608	.....	.....	608
California	179,774	2,288	.....	980	183,043
Colorado	1,383	22,629	.....	.....	24,012
Connecticut	1,413	.....	.....	.....	1,413
Dist. of Columbia	210	.....	.....	.....	210
Florida	38	.....	.....	.....	38
Illinois	10,957,495	3,657,629	2,461,640	691,390	17,768,154
Indiana	770,257	99,947	978	39,490	910,672
Iowa	85,051	60,646	6,070	6,904	158,671
Kansas	65,481	39,952	.....	.....	105,433
Kentucky	2,428	64,305	.....	.....	66,733
Louisiana	.....	2,748	.....	.....	2,748
Maine	283	.....	.....	24	307

(Testimony of E. W. Gaumnitz)

Maryland	386	.....	.....	.....	.....	386
Massachusetts	22,115	95,285	.....	200	117,600	
Michigan	1,366,380	92,484	776,978	351,791	2,587,633	
Minnesota	1,100,045	1,351,090	935,689	259,082	3,646,106	
Mississippi	425	2,223	.....	.....	2,648	
Missouri	131,806	110,584	.....	78,510	320,900	
Nebraska	77,563	56,309	.....	2,080	135,952	
New Hampshire	.....	.....	.....	13	13	
New Jersey	15,349	82,052	1,718	140	99,259	
New Mexico	.....	7,291	.....	.....	7,291	
New York	5,782,144	2,571,109	973,945	3,023,571	12,350,769	
No. Dakota	.....	3,367	.....	7,597	10,964	
Ohio	465,546	51,014	22,527	10,995	550,082	
Oklahoma	211	342	.....	.....	553	
Pennsylvania	92,340	21,949	22,159	.....	136,448	
Rhode Island	1,110	.....	.....	.....	1,110	
So. Dakota	69,348	75,519	.....	.....	144,867	

(Testimony of E. W. Gaumnitz)

	New York	Chicago	Philadelphia	Boston	Total 4 Markets
Tennessee	30,000	1,615	.....	.....	31,615
Texas	64,357	2,504	.....	.....	66,861
Utah	316	.....	.....	.....	316
Vermont	42,853	.....	.....	131,403	174,256
Virginia	184,430	13,027	.....	.....	197,457
Washington	.....	1,150	.....	.....	1,150
W. Virginia	25,148	.....	.....	.....	25,148
Wisconsin	37,805,470	28,267,232	18,077,763	13,074,317	97,224,782
Wyoming	.....	215	.....	.....	215
Canada	509,039	131,490	.....	1,440	641,969
Total	50,850,194	36,888,974	23,279,667	17,679,927	137,698,762

*Source: U. S. Department of Agriculture, Bureau of Agricultural Economics, Division of Dairy and Poultry Products.

(Testimony of E. W. Gaumnitz)

D. Exports and imports of dairy products.

The following table indicates the volume of domestic exports of butter from the United States, by countries of destination for the year ended June 30, 1933:^{1/}

Country	Amount 1000 pounds
United Kingdom	1
Honduras	108
Panama	369
Mexico	128
Cuba	1
Haita, Republic of	291
Other West Indies ^{2/}	214
Columbia	12
Peru	14
Venezuela	45
Philippine Islands	83
Other countries	120
	<hr/>
Total	1386

^{1/} Source: Yearbook of Agriculture, 1934.

^{2/} Excludes Bermudas.

Domestic exports of cheese from the United States, by countries of destination, for the year ended June 30, 1933, were as follows:^{1/}

Country	Amount 1000 pounds
Panasa	640
Mexico	69
Canada	44
Honduras	50

(Testimony of E. W. Gaumnitz)

British Honduras	25
Cuba	56
Virgin Islands	59
Haiti, Republic of	26
Other West Indies ^{2/}	72
China	36
Philippine Islands	150
Other countries	119
Total	<hr/> 1346

^{1/} Source: Yearbook of Agriculture, 1934.^{2/} Excludes Bermudas.

The following table indicates the domestic exports of condensed milk during the year ended June 30, 1933, by countries of destination:^{1/}

Country	Amount 1000 pounds
Total Europe	31
Cuba	360
Philippine Islands	1382
Hong Kong	1525
China	699
Mexico	224
Jamaica	1073
Honduras	282
Costa Rica	129
Venezuela	176
Other countries	666
Total	<hr/> 6347

^{1/} Source: Yearbook of Agriculture, 1934.

(Testimony of E. W. Gaumnitz)

The following table indicates the exports (domestic) of evaporated milk from the United States, by countries of destination, for the year ended June 30, 1933:^{1/}

Country	Amount 1000 pounds
United Kingdom	926
Other Europe	31
	<hr/>
Total Europe	957
Philippine Islands	19,598
Panama	4,616
Peru	242
China	555
British Malaya	628
Cuba	179
Japan	184
Mexico	700
Netherland West Indies	1,373
Netherland East Indies	879
Siam	1,847
Newfoundland and Labrador	503
Other countries	1,405
	<hr/>
Total	33,666

^{1/} Source: Yearbook of Agriculture, 1934.

(Testimony of E. W. Gaumnitz)

Imports of butter into the United States, by countries of origin, for the year ended June 30, 1933, were as follows:^{1/}

Country	Amount 1000 pounds
United Kingdom	129
Denmark	134
Other Europe	106
	<hr/>
Total Europe	359
New Zealand	547
Canada	64
Other countries	21
	<hr/>
Total	991

^{1/} Source: Yearbook of Agriculture, 1934.

Imports of cheese into the United States, by countries of origin, for the year ended June 30, 1933, were as follows:^{1/}

Cheese, Emmenthaler (Swiss)

Country	Amount 1000 pounds
Switzerland	10,492
Denmark	518
Germany	420
Other countries	874
	<hr/>
	12,304

(Testimony of E. W. Gaumnitz)

Cheese other than Swiss	
Italy	30,398
France	3,775
Netherlands	2,177
Switzerland	1,516
Other Europe	3,936
	<hr/>
Total Europe	41,802
Canada	1,109
Other countries	708
	<hr/>
	43,619

^{1/} Source: Yearbook of Agriculture, 1934.

E. Intermarket price relationships.

The free flow of manufactured dairy products between different markets in response to price changes engendered by changing supply and demand conditions results in decidedly close correlation between the prices of dairy products in different markets. The relationship between the wholesale price of 92 score butter at New York City and Chicago, Illinois, is shown in Figure 3. If the wholesale price of 92 score butter at New York should become so high relative to the wholesale price of 92 score butter at Chicago that shippers of butter could make a greater profit by shipping their butter to New York than to Chicago, they would do so, increasing supplies on the New York City market and thereby tending to reduce prices in New York City relative to prices in Chicago, and vice-versa if the wholesale price of

(Testimony of E. W. Gaumnitz)

92 score butter at Chicago should become such that it were more profitable to ship butter to Chicago rather than New York City.

In addition to the above intermarket price relationships, the supply of the raw material, butterfat, is interchangeable between products, so that the prices received by producers of butterfat in all uses tend to be markedly inter-related. These producer price inter-relationships are due to the fact that farmers can and do shift their disposal of butterfat from one use to another as price conditions warrant, thereby tending to keep the farm price of butterfat in any one of the several uses closely associated with the farm prices of butterfat in all other uses.

The above generalization is substantiated by a consideration of the relationships between (1) the index of the United States average farm price of butterfat and the index of the United States farm price of milk sold at wholesale (such indices are the percentage each yearly price is of the 1910-1914 average of the yearly average prices, or in other words, the 1910-1914 average of the yearly average prices - 100), (2) the index of the United States average farm price of butterfat and the index of the United States average farm price of butter (in both cases the 1910-1914 average of the yearly average prices - 100), (3) the average monthly farm prices of butterfat in the United States and the average monthly wholesale prices of 92 score butter at New York City and Chicago, and (4) the United States farm price of butterfat and the prices paid pro-

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ducers for milk at condenseries, such milk being utilized in the manufacture of condenses and evaporated milk.

The relationships noted in (1), (2), (3) and (4) above are depicted graphically in Figures 1, 2, 3 and 4 to 11 respectively (figures 4 to 11 depicting the relationship between the United States average farm price of butterfat and the price paid producers at condenseries (processing plants engaged in the manufacture of condensed and evaporated milk) by geographical divisions); such figures being as follows:

FIGURE I:
 Relationship between index of U.S. farm price of
 butterfat and index of U.S. farm price of milk
 wholesale, 1910 - 1933.

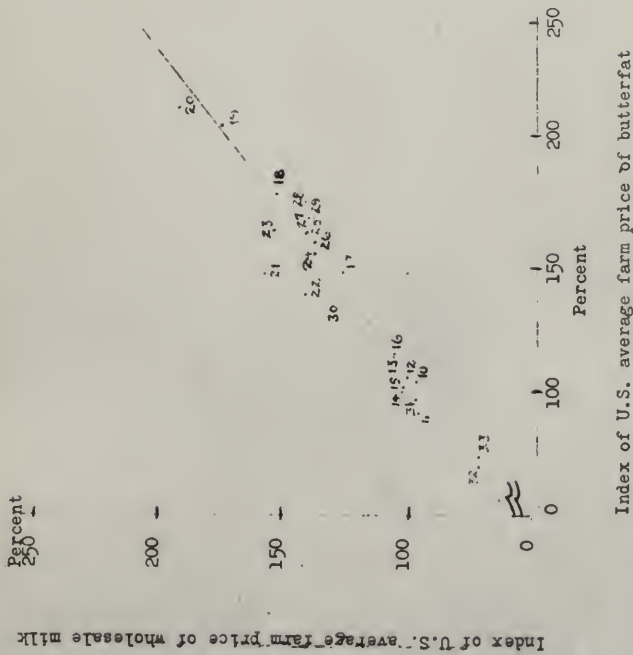


FIGURE II:

Relationship between index of U.S. farm price
 of butterfat and index of U.S. farm price of
 butter, 1910 - 1933.

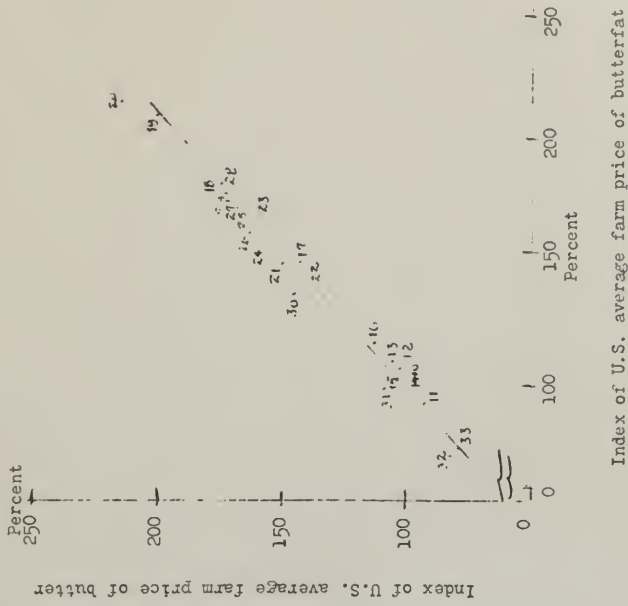


FIGURE 3 -- Average monthly prices of butterfat in the United States and average monthly wholesale prices of 92 score butter in New York and Chicago, 1925 to June, 1934

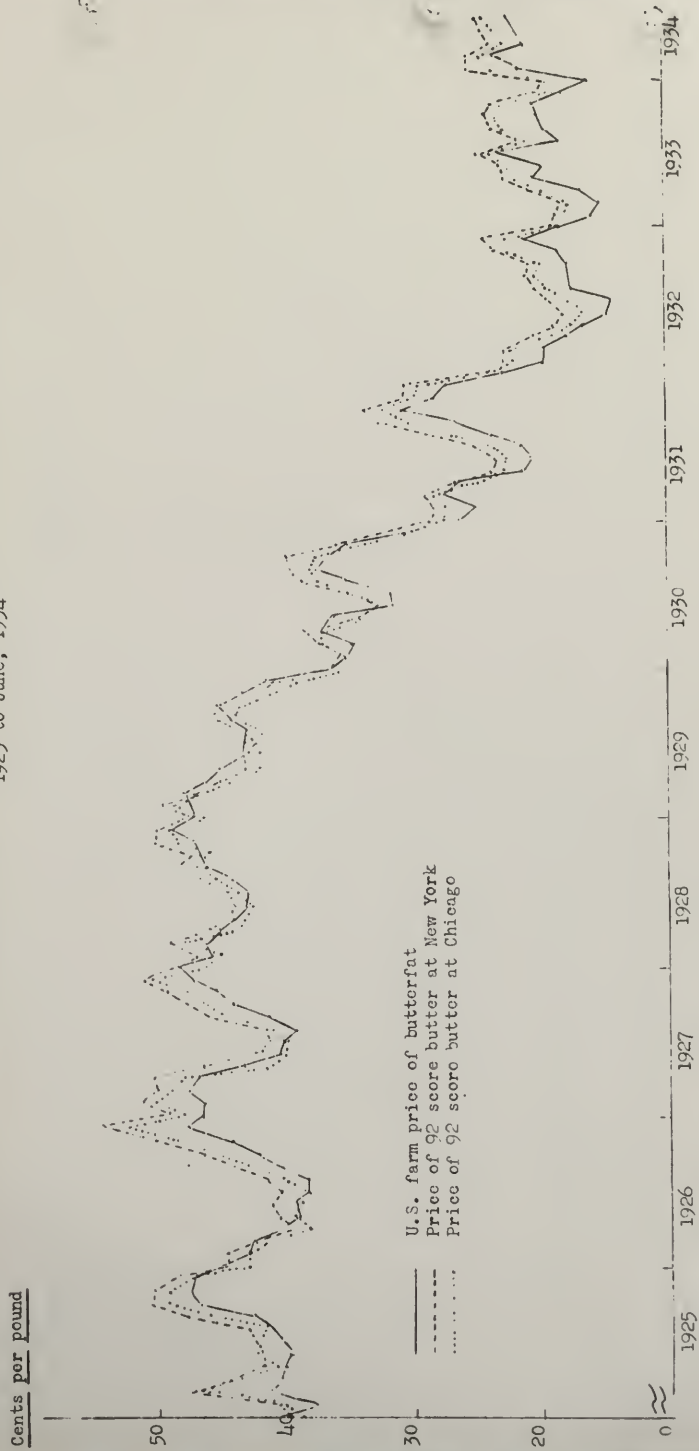


FIGURE 4 -- Relation between U.S. farm prices of butterfat and prices paid to producers for 3.5% milk per cwt. delivered at condenseries in the United States

1922-1933

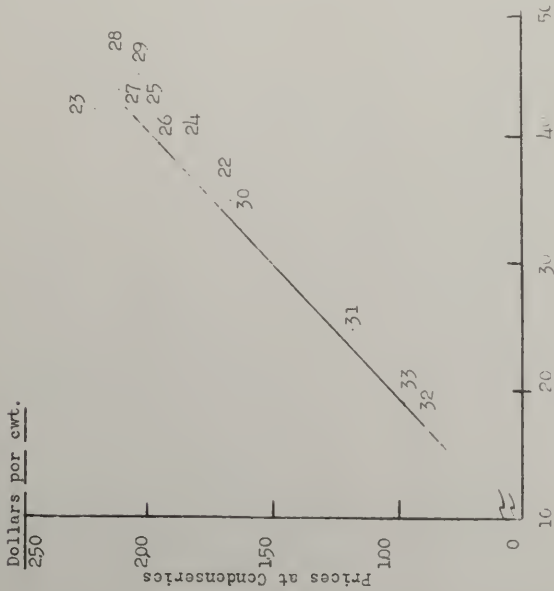


FIGURE 5 -- Relation between U.S. Farm Prices of butterfat and prices paid to producers for 3.5% milk per cwt. delivered at Condenseries in Middle Atlantic Section.

1922-1933

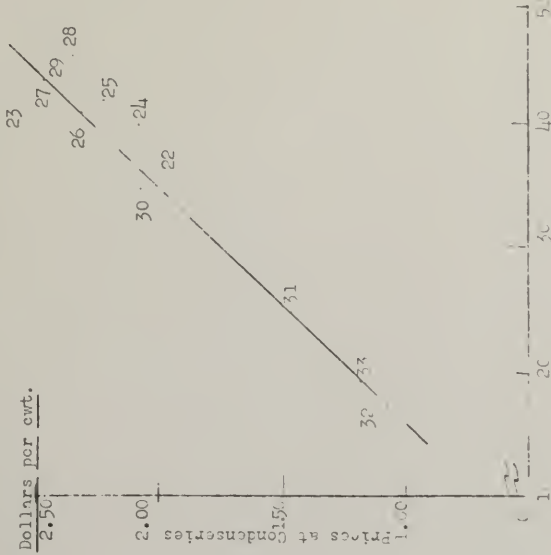


FIGURE 6 -- Relation between U.S. farm price of butterfat and prices paid to producers for 3.5% milk per cwt. delivered at Condenseries in South Atlantic section 1927-1933

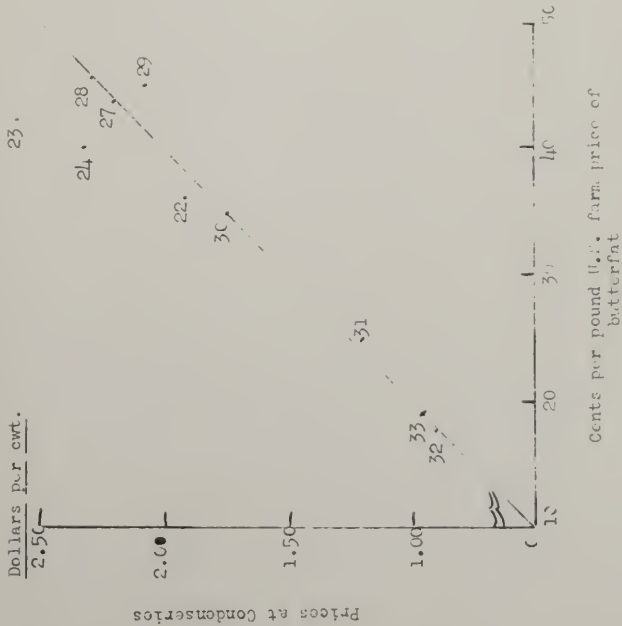


FIGURE 7 -- Relation between U.S. farm price of butterfat and prices paid to producers for 3.5% milk per cwt. delivered at Condenseries in West North Central section 1927-1933

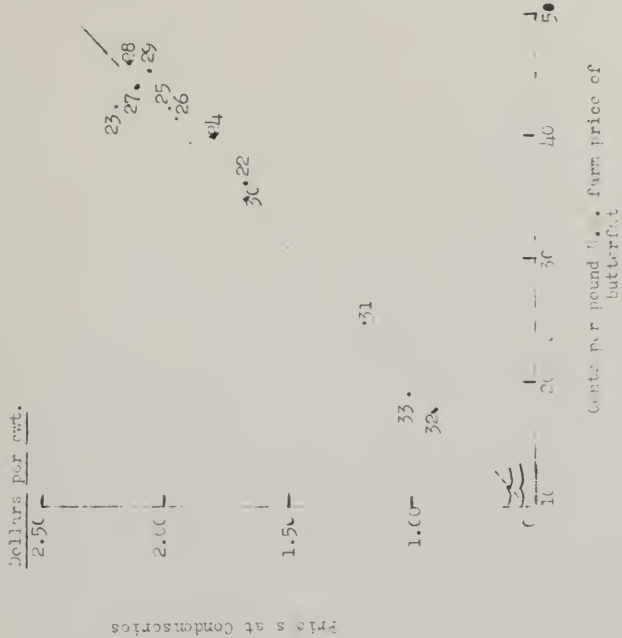


Fig. 8 - Relation between U. S. farm prices of Butterfat and prices paid to Producers for 3.5% milk per cwt. delivered at Condenseries in Western and Central Section 1922-1933
Dollars per cwt.

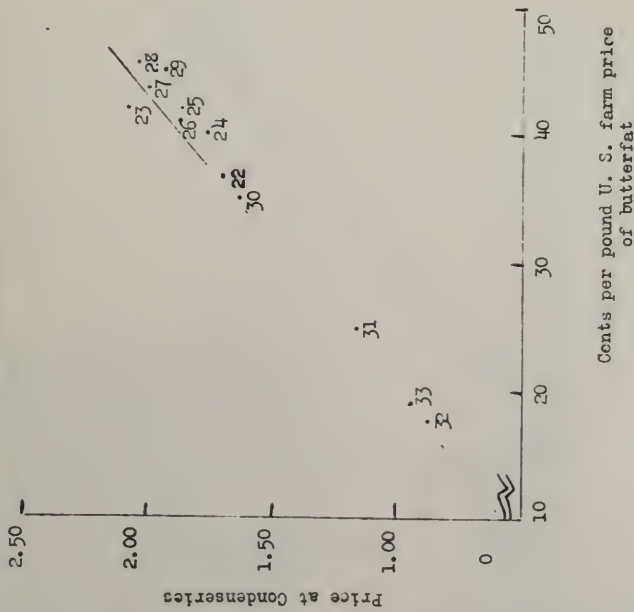


Fig. 9 - Relation between U. S. farm prices of Butterfat and prices paid to Producers for 3.5% milk per cwt. delivered at Condenseries in South Central Section 1922-1933
Dollars per cwt.

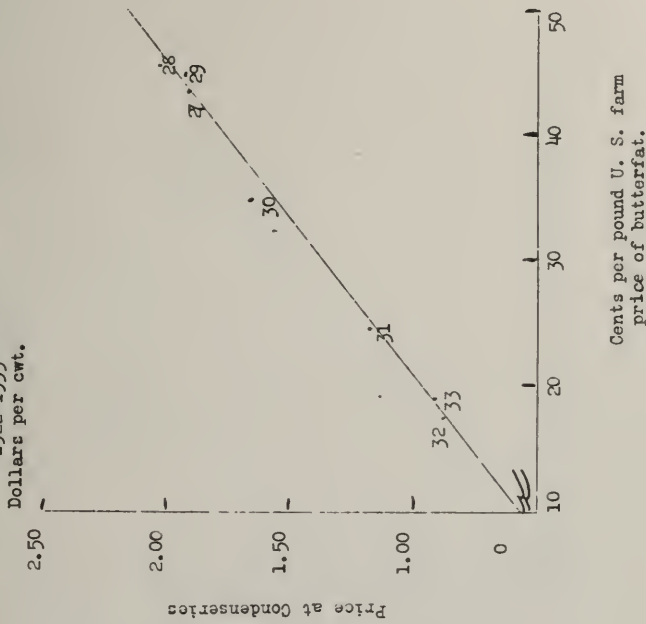


Fig. 10 - Relation between U. S. farm prices of Butterfat and prices paid to Producers for 3.5% milk per cwt. delivered at Condenseries in North-West Central Section
1922-1933

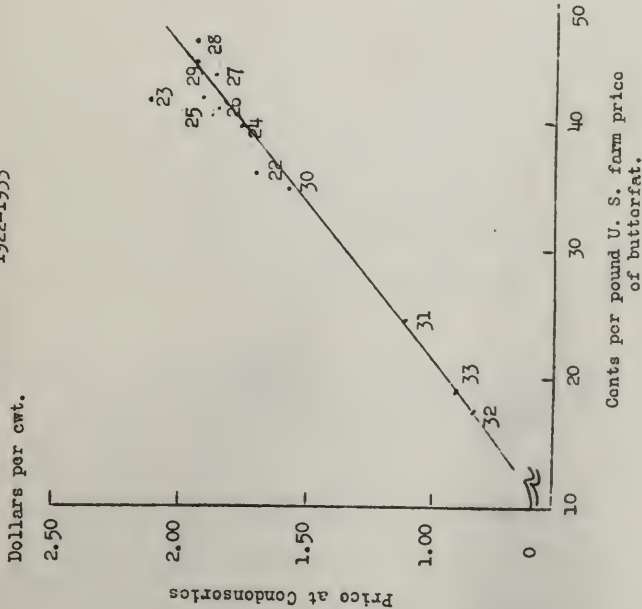
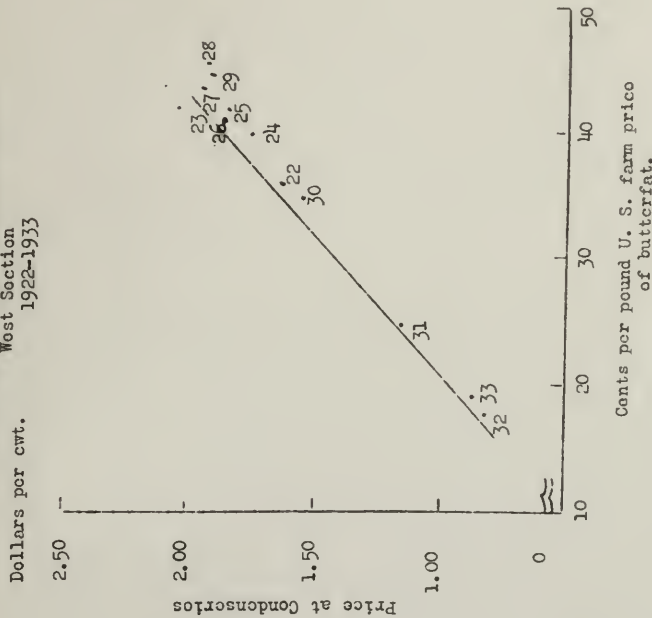


Fig. 11 - Relation between U. S. farm prices of Butterfat and prices paid to Producers for 3.5% milk per cwt. delivered at Condenseries in South West Section
1922-1933



(Testimony of E. W. Gaumnitz)

The marked relationships noted above obtain because of the interchangeability of the supply of the raw material, butterfat, and substantiate the contention that any regulation that tends to stabilize and raise the price of butterfat in any one of the major products in which butterfat is utilized, also tends to stabilize and raise the price of betterfat in all uses.

The prices received by producers for milk used for consumption as fluid milk are also closely related to the prices received by producers for butterfat used in the production of manufactured dairy products. These close relationships arise from the fact that it is impossible to accurately foercast the daily requirements of fluid milk in any milk market, so that milk intended for fluid distribution finds its way into manufactured products; and the fact that the price relationships between fluid milk and milk for manufacturing purposes indicate that the interchangeability of supply of milk for fluid distribution and of milk for manufacturing purposes is of such nature that fluid milk prices in any given area are subject to the same supply and demand forces on a national scale as those to which manufactured products are subject.

The demand for fluid milk in any given market varies markedly from day to day. So important is this factor that producers must supply a quantity at least 15 per cent in excess of the average daily consumption in the market, a margin of safety, in order to meet unpredictable daily variation in demand. In addition, in most milk markets an amount in excess of the daily sales plus the

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margin of safety is usually produced and brought to the distributor's plant. This milk is collected from the farmer and is combined and processed in the distributor's plant, so that the milk of any producer so handled is indistinguishable from that of any other producer. In addition, it is impossible to determine at this point what portion of the milk in the distributor's plant will finally be consumed as fluid milk in that market, or what portion of the milk will be converted into manufactured dairy products and perhaps sold in distant markets. It is quite common for distributors to have "route returns", that is, milk that is bottled for fluid distribution, is taken out on the delivery route, and, finding no market, is utilized in manufactured dairy products.

The above generalizations are substantiated by inter-market price relationships, and by the relationships between prices of fluid milk and milk for manufacturing purposes. If fluid milk prices in any given market were not affected by the prices of milk in other distant markets and by the price of butterfat in all other uses, and did not in turn affect the price of milk and butterfat in other distant markets and in other uses, there would be little reason to expect a close relationship between the prices received by producers of fluid milk and those received by producers of milk for manufacturing purposes.

However, the prices received by producers for fluid milk testing 3.5 percent butterfat used for fluid consumption are closely related to the United States average farm price of butterfat. These relationships are not re-

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stricted to a country-wide consideration; the prices received by producers in every market area, whether surplus or deficit, bear these marked relationships to the United States average farm price of butterfat. Since it was demonstrated in the foregoing pages that the prices received by producers for butterfat entering into specific uses are closely related to the United States average farm price of butterfat, it naturally follows that the prices received by producers for milk used for fluid consumption are closely associated with the prices received by producers for butterfat entering all other uses.

The relationships noted above are graphically depicted in figures 12 to 21, inclusive, which show the relationship between the United States average farm price of butterfat and the prices paid producers for 3.5 percent milk used for fluid consumption in the markets of Hartford, Connecticut; New York City, New York; Boston, Massachusetts; Washington, D. C.; Los Angeles, California; Baltimore, Maryland; Seattle, Washington; Richmond, Virginia; Milwaukee, Wisconsin; and Louisville, Kentucky. Figures 12 to 21 are as follows:

DA-126

FIGURE 12:

Relationship between U.S. farm price of butterfat lagged one year and prices paid producers for 3.5% milk used for fluid consumption f.o.b. Hartford, Conn., 1923 - 1933

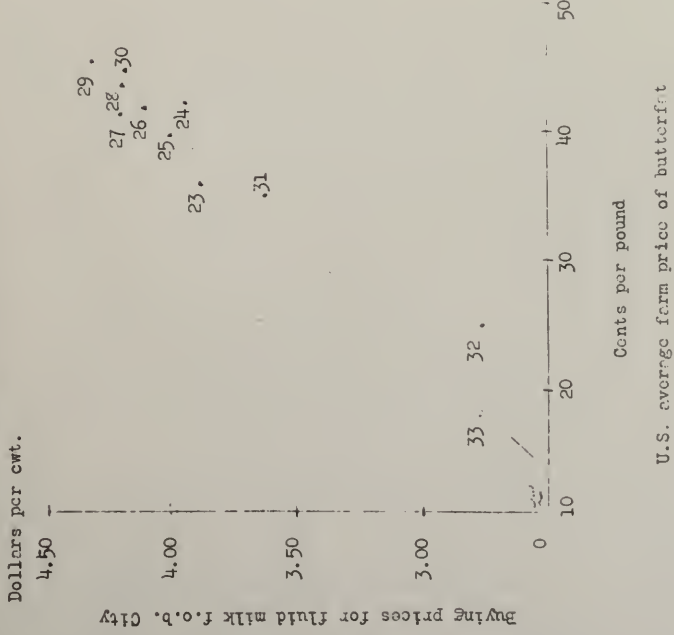
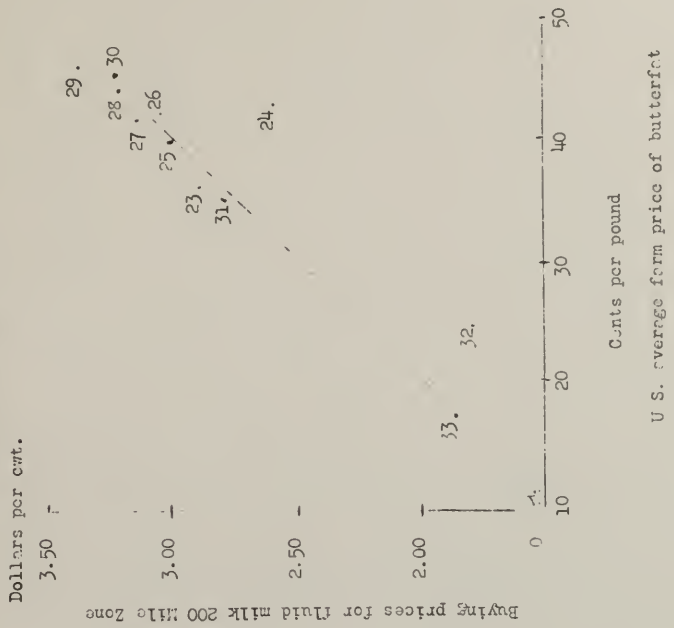


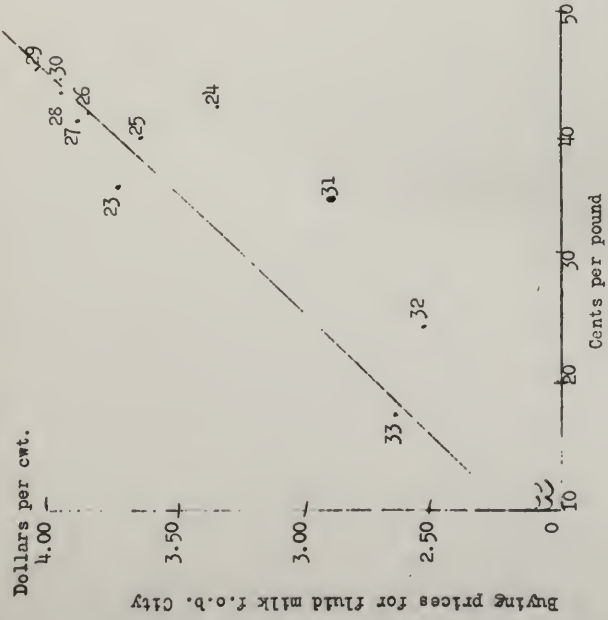
FIGURE 13:

Relationship between U.S. farm price of butterfat lagged one year and prices paid producers for 3.5% milk used for fluid consumption, 200 mile zone, New York City, 1923 - 1933



DA-127
FIGURE 14:

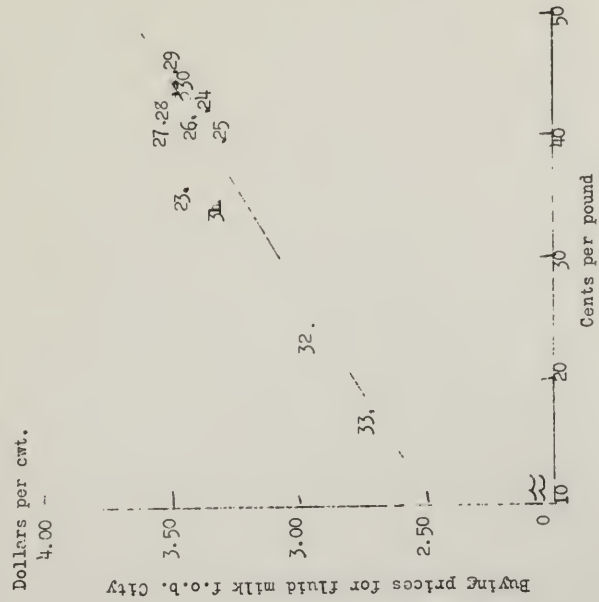
Relationship between U.S. farm prices of butterfat legged one year and prices paid producers for 3.5% milk used for fluid consumption f.o.b. Boston, 1923 - 1933



U.S. farm price of butterfat

FIGURE 15:

Relationship between U.S. farm prices of butterfat legged one year and prices paid producers for 3.5% milk used for fluid consumption f.o.b. Washington, 1924 - 1933



U.S. farm price of butterfat

FIGURE 16: - Relationship between U.S. Farm Prices of Butterfat Lagged one year and prices paid producers for 3.5% milk used for Fluid Consumption f.o.b. Los Angeles 1923-1933

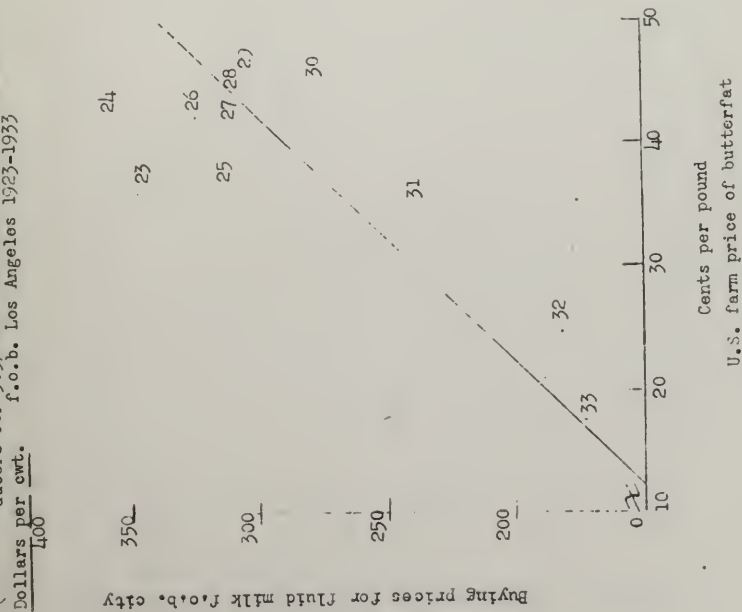
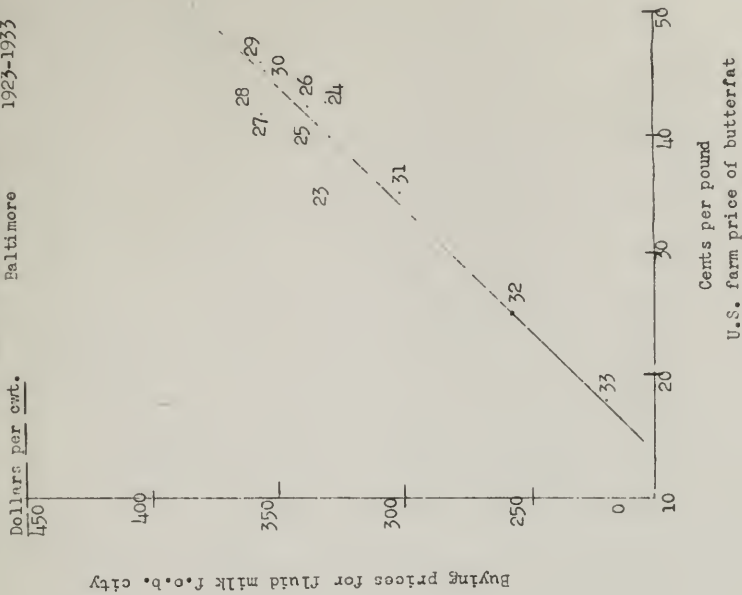


FIGURE 17: - Relationship between U.S. farm prices of Butterfat Lagged One Year and Prices paid producers for 3.5% milk used for Fluid Consumption f.o.b. Baltimore 1923-1933



DA-12J

FIGURE 18:

Relationship between U. S. farm prices of butterfat and prices paid producers for 3.5% milk used for fluid consumption f.o.b. Seattle, Washington, 1922 - 1933.

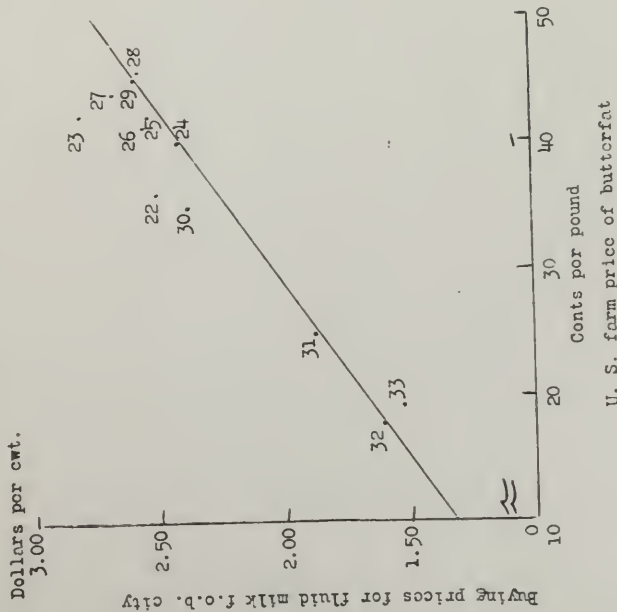
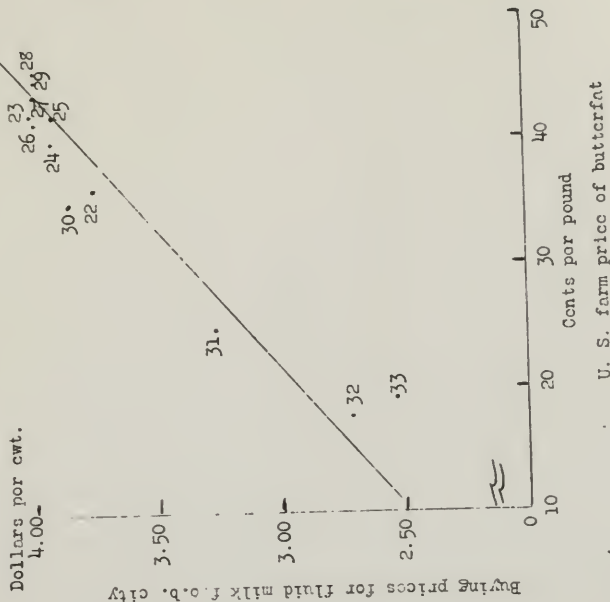


FIGURE 19:

Relationship between U. S. farm prices of butterfat and prices paid producers for 3.5% milk used for fluid consumption f. o. b. Richmond, Virginia, 1922 - 1933.



DA-12x

FIGURE 20:

Relationship between U.S. farm prices of butterfat lagged one year and prices paid producers for 3.5% milk used for fluid consumption f.o.b. Milwaukee, 1923 - 1933

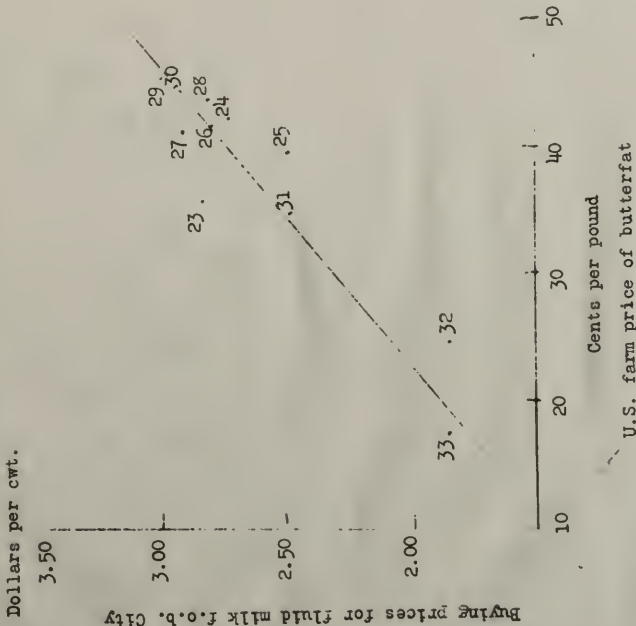
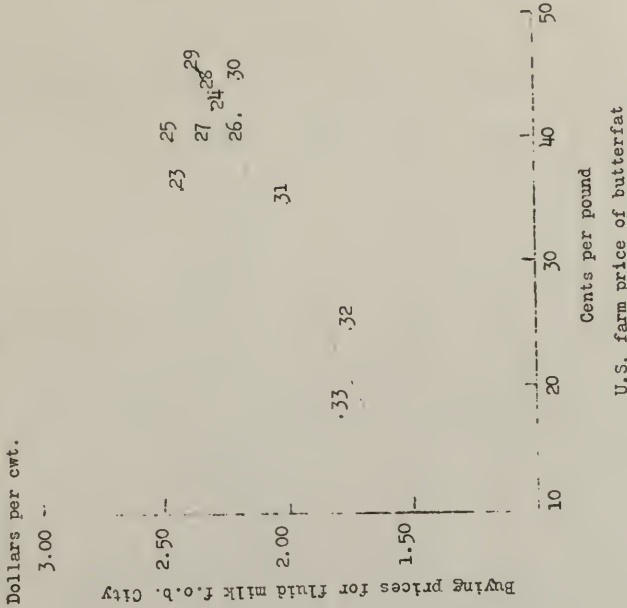


FIGURE 21:

Relationship between U.S. farm prices of butterfat lagged one year and prices paid producers for 3.5% milk used for fluid consumption f.o.b. Louisville, Kentucky, 1923 - 1933



(Testimony of E. W. Gaumnitz)

The relationships noted above obtain because farmers will, over a period of time, shift their method of disposal of the milk they produce as price conditions warrant. If an adequate supply of fluid milk is to be assured in any given market, the prices received by producers must be sufficient, over a period of time, to cover the additional costs incurred in the production of high quality milk for consumption as fluid milk. On the other hand, the existence of abnormal differentials between the price of fluid milk and milk for manufacturing purposes will cause producers to shift their marketing in the direction of the more favorable prices, continuing the process until normal price relationships are restored.

F. Interstate and foreign commerce in dairy products, Los Angeles Area.

Available information indicates that during 1933, the excess of milk delivered to Los Angeles over that distributed and consumed in fluid milk averaged 20,000 pounds daily. This excess milk is manufactured into other dairy products, and enters into competition with and directly burdens and affects the interstate commerce in milk and other dairy products in the Los Angeles Sales Area.

The extent of the foreign and inter-coastal water borne commerce in milk and dairy products in the Los Angeles Sales Area is indicated in the following tables.

The following table indicates the coastwise shipments of dairy products from Los Angeles during the year 1933:^{1/}

(Testimony of E. W. Gaumnitz)

State	Powdered Skim Milk (pounds)	Malted Milk (pounds)
Oregon	40,750	12,200
Washington	383,070	9,402
Virginia	101,000	.....
Louisiana	4,284	.....
Maryland	86,400	.....
Massachusetts	55,000	.....
New York	276,896	11,685
	<hr/>	<hr/>
Total	947,400	33,287

^{1/} Source: Records of the Marine Exchange of the Los Angeles Chamber of Commerce. These records were compiled from Customs Records, Los Angeles District for the year 1933.

Exports from Los Angeles to Hawaii and foreign countries in 1933 were as follows:^{1/}

Products	Hawaii (pounds)	Foreign Countries (pounds)
Cream	14,400	.....
Evaporated milk	870	110,690
Condensed Milk	.....	2,120
Powdered skim milk	101,320	1,190
Ice cream mix	4,160	1,450
Malted milk	9,880	240
Butter	52,980	30
Cheese	9,286	110
Milk sugar	.....	22,400

^{1/} Source: Records of the Marine Exchange of the Los Angeles Chamber of Commerce. These records were compiled from Customs Records, Los Angeles District for the year 1933.

Imports of dairy products into Los Angeles for the year 1933 were as follows:^{1/}

(Testimony of E. W. Gaumnitz)

Imports from	In Pounds						
	Malted Milk	Condensed Milk	Powdered Skim Milk	Butter	Cheese	Milk Sugar	Condensed Buttermilk
Foreign countries	.....	.....	.....	150	524,389	.....	.....
Coastwise inbound							
Oregon	5,350	.....	.....	.....	.....	.....	.....
Washington	35,953	8,000	57,011	.....	.....	.....	.....
Intercoastal inbound							
New York	506,615	9,600	262,456	.....	.....	5,600	.....
Pennsylvania	16,220	.....	.....	.....	.....	.....	.....
Louisiana	.....	.....	.....	.....	.....	.....	40,756

^{1/} Source: Records of the Marine Exchange of the Los Angeles Chamber of Commerce. These records were compiled from Customs Records, Los Angeles District for the year 1933:

(Testimony of E. W. Gaumnitz)

The following table indicates the receipts of butter at Los Angeles by states of origin during the period 1925 to 1933, inclusive:^{1/}

State	(1000 lbs., i.e. 000 omitted)										
	1925	1926	1927	1928	1929	1930	1931	1932	1933		
Arizona	.....	13	26	85	37	.....	25	26	447		
California	23,422	22,011	20,692	22,659	17,069	16,155	18,040	16,359	15,491		
Colorado	875	749	603	748	936	1,057	1,668	2,068	2,741		
Idaho	8,555	13,101	13,224	12,945	15,335	16,678	16,920	17,627	16,923		
Illinois	144	.....	21	.....	104	.....	.....	23	.....	
Iowa	.....	19	7	.....	.....	.....	.....	.....	.....
Kansas	.....	26	25	.....	50	24	.....	.....	53		
Minnesota	410	.....	.....	.....	26	48	.....	.....	.....
Missouri	.....	1	1	.....	.....	2	.....	.....	.....
Montana	1,541	1,953	1,048	1,280	1,405	1,618	2,251	2,280	770		
Nebraska	115	16	.....	.....	27	.....	61	77	410		
Nevada	550	589	499	280	201	54	5	21	1		
New Mexico	.....	.....	.....	.....	82	83	56	129	131		

(Testimony of E. W. Gaumnitz)

Receipts of cheese at Los Angeles, for the years 1928 to 1933, inclusive, were as follows:^{1/}

	Pounds
1928	14,585,733
1929	14,143,568
1930	14,894,514
1931	13,505,215
1932	14,414,155
1933	11,921,792

^{1/}Source: U. S. Department of Agriculture, Bureau of Agricultural Economics; Federal-State Market News Service.

California furnishes but a small percentage of the cheese for the Los Angeles market. In 1933, of the total receipts of 11,921,792 pounds of cheese at Los Angeles, but 1,224,986 pounds or 10.3 percent was produced in the State of California. Receipts of cheese in 1933, by states of origin, are given below:^{1/}

State	Pounds
Arizona	7,571
California	1,224,986
Colorado	85,190
Idaho	3,101,577
Illinois	17,885
Minnesota	100,332
Nevada	60,860
New York	219,310
Oregon	3,424,883
Utah	2,059,379
Washington	23,633

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Wisconsin	1,581,184
Wyoming	15,002
	<hr/>
Total	11,921,792

^{1/} Source: U. S. Department of Agriculture, Bureau of Agricultural Economics; Federal-State Market News Service.

G. The effect of price fluctuations in local markets on the interstate commerce in milk and dairy products.

As has already been described under the heading Economic Status of Milk Producers as a Result of the Depression, price fluctuations in many milk markets throughout the United States are caused by price wars, price cutting, and other methods of destructive competition among distributors. Price wars, price cutting, and other methods of destructive competition were prevalent in the Los Angeles milk market prior to the issuance of the Los Angeles Milk license. In the course of such practices, distributors reduce the prices paid by them to dairy farmers for market milk purchased below the point justified by the existing supply and demand situation. With the descent of prices, there results an adverse effect on the market of butter and of other manufactured dairy products in general, which effect has been translated through the intermediary of interstate commerce in such products into a decline of prices in interstate markets for milk in all of its usages. The happenings in this series of repercussions are in strict accord with the price relationships concretely established in the preceding pages and may be outlined in connection with the effect of the price fluctuations, as follows:

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(1) Effect of price fluctuations on local markets. The slump in prices of market milk by agency of destructive trade methods brings about the sale of a greater quantity of manufacturing milk to local processors, which increased sale results in a correspondingly increased amount of dairy products being locally manufactured. Such shifting of the method of disposal of the milk produced is readily explainable by the facts (a) that the differential between the price paid to the producer of market milk and the price paid to the producer of manufacturing milk normally tends to equal the difference between the cost of producing milk in conformity with the applicable health regulations of the market in which sold and the cost of producing milk which does not comply with such regulations, and (b) that if price conditions warrant, by such price differential being less than the difference in cost of production, producers will abandon the production of market milk to produce manufacturing milk. While it is true that a continuation of the process of shifting the method of disposal of the two kinds of milk will eventually restore the normal price relationship, as explained heretofore under the heading Relationships between milk prices, the accomplishment of this restoration is prolonged indefinitely through a continuation of price wars and a resultingly continued decline of market milk prices below the point justified by the existing supply and demand situation.

Thereafter, the increased output of dairy products in the local market is felt, in accord with the practical

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working of the law of supply and demand, by a destabilization of prices and the concomitant lowering of the price of butter, as one of these products; and, further, by an increase in the supply of butter that is transported to interstate markets to receive a price more favorable than that of the local market. The more favorable price in interstate markets is obtainable in conformity with the fact that the free flow of manufactured dairy products between markets results in inter-market price relationships of such nature that the prices of these products tend to vary between markets only by the amount of transportation costs from one market to the next, plus the necessary additional handling charges other than transportation.

Moreover, the disturbance of the price balance between fluctuating markets and interstate markets serves, following the rules of inter-market relationships just enunciated, to check the importation from the latter markets to the former of dairy products; since the price differential between the two classes of markets comes to be less than the cost of intermarket transportation charges, plus the necessary additional handling charges other than transportation.

(2) Effect of price fluctuations on interstate markets. The added influx of butter and other dairy products into these markets from unstabilized markets renders an increased supply of such products available for sale. The principle of intermarket price relationships, which began to operate in the unstabilized areas as noted in the foregoing pages, continues to operate on the inter-

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state markets concurrently with the entry of the additional dairy products; and, resultingly, the price of butter, and the prices of other dairy products as well, tend to decline in conformity with the increased supply so that price levels equivalent to those of the fluctuating markets, plus the differential of transportation and extra handling charges, are reached.

Successively, the lowering of prices of dairy products conduces to the payment of lower prices for the manufacturing milk utilized in the manufacture of these products; a development which moves from the facts that (a) the prices of butter and other dairy products are the prime determinants of the price of butterfat, and (b) that the prices of butterfat in all its uses are determinants of the price of manufacturing milk. The markedly close relationships, on both national and local market scales, between the prices of butter and of other manufactured products and the price of butterfat serves to demonstrate these facts.

Finally, the lowered price of manufacturing milk results in a lowered price of market or fluid milk, since producers can and do shift their method of disposal of milk to distributors so that the difference in prices between the two kinds of milk comes to equal the added cost of preparing market milk for market.

(3) General effect of price fluctuations on all markets. Thus price cutting on local markets results in (a) the increase in supply of butter and other dairy products in the markets throughout the country, and (b) the decrease in prices paid to producers of manufacturing

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milk and to producers of market milk. The effect of these local practices on the national market for manufactured dairy products and upon the price in other markets is emphasized when these practices occur simultaneously in many local markets.

The same general effect tends to establish the fact that the fluid milk price in any given market tends to influence the fluid milk price in other distant markets and to influence the price of milk used in manufactured dairy products in interstate commerce.

V. PROVISIONS OF LICENSE FOR MILK, LOS ANGELES MILK SHED, LICENSE NO. 17, ISSUED NOVEMBER 16, 1933.

A. Prices to be paid producers.

The provisions in regard to prices that are to be paid producers are found in Exhibit A of the License.

The following table indicates the monthly farm prices of all milk sold at wholesale, and parity prices for such milk, during the period January to October, 1933, inclusive:

Month	Farm Price of Milk Sold at Wholesale	Parity Price of Milk Sold at Wholesale
January	\$1.70	\$1.93
February	1.55	1.87
March	1.50	1.82
April	1.25	1.80
May	1.35	1.77
June	1.35	1.76
July	1.60	1.86

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August	1.60	1.97
September	1.60	2.08
October	1.65	2.13
Average for ten months' period	1.52	1.90

The following table indicates the dealers' buying prices f.o.b. city of Class I milk testing 4 percent butterfat, and the parity prices for such milk, during the period January to October, 1933, inclusive:

Month	Dealers' buying prices f.o.b. city of Class I milk testing 4 percent butterfat	Parity prices of 4 percent milk f.o.b city	Parity price per pound of butterfat
January	\$2.20	\$2.68	67.0
February	2.20	2.65	66.2
March	2.20	2.60	65.0
April	1.60	2.60	65.0
May	1.25	2.59	64.8
June	1.81	2.59	64.8
July	1.81	2.71	67.8
August	2.14	2.87	71.8
September	2.21	3.02	75.5
October	2.21	3.04	76.0
Average for ten months' period	1.96	2.74	68.4

The farm price of milk sold at wholesale includes all milk sold at wholesale by farmers, a portion of such milk being used for distribution and consumption as

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fluid milk, and the remaining portion being used in manufacture of dairy products. The dealers' buying prices f.o.b city for Class I testing 4 percent butterfat are prices paid for milk which is used, except in case of surplus over market requirements, for distribution and consumption as fluid milk.

The differential between the prices paid producers for all milk sold at wholesale and prices paid producers f.o.b. city for Class I milk testing 4 per cent butterfat (Grade A milk and Class I milk are the same, both terms referring to milk purchased for distribution and consumption as fluid milk) represents, (1) a fair and reasonable premium to compensate the producer for the additional costs of producing high quality milk; (2) an allowance to compensate producers for the costs of transporting fluid milk, which is bulky and perishable; and (3) an allowance to compensate the producer for maintaining a relatively stable volume of production of high quality milk somewhat larger than the average daily volume actually sold as Class I in the market, this volume in addition to actual average sales being required to meet daily fluctuations in the sales of fluid milk.

The prices for Class I (or Grade A) milk specified in the License (45c, 51c, and 61c per pound butterfat in such milk, depending on the price of butter) are directly related to the wholesale price of 92-score butter in Los Angeles. The reasons for so relating the price of Grade A or Class I milk to the wholesale price of 92-score butter in Los Angeles, as well as the reasons for fixing prices somewhat lower than the parity price, are as fol-

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lows: Class I or Grade A milk sold for consumption as milk must be produced under highly sanitary conditions in accordance with local health regulations. The cost of producing such milk is therefore substantially higher than the cost of producing milk used in the manufacture of butter, cheese, condensed and evaporated milk, and other manufactured milk products, and a higher price to the producer of such milk is economically justified. However, such prices must be maintained in a reasonable relationship to the prices received by producers of manufacturing milk. If a price for Class I milk were fixed at an unreasonably high figure above the prices received by producers for manufacturing milk, producers who had formerly produced milk for manufacturing purposes only would equip their farms for the production of high quality milk. This would tend to subject the fluid milk market to serious pressure through substantially increasing the market surplus, and would tend to result in a lower average price for all producers in the market.

The foregoing considerations and competitive factors impose imitations upon the prices which may justifiably be fixed and maintained under the License. The provision of the License specifying the prices paid to producers for Class I (or Grade A) milk is of such nature that as butter prices increase, fluid milk prices also increase, thereby tending gradually to approach the parity price.

The prices specified in the License for milk used to produce cream include a reasonable premium over the wholesale price of 92-score butter at Los Angeles to

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compensate the producer for the additional costs incurred in producing cream of sufficiently high quality to meet the requirements of the city health ordinances specifying the quality requirements for milk used to produce the cream distributed and consumed in the Los Angeles Sales Area. The differential between the prices specified in different counties represents a reasonable allowance for differences in transportation costs between counties.

The prices specified in the License for milk delivered in bottles to contracting distributors (except to stores) are such that the producers of such milk are given a reasonable premium over the prices received by producers of bulk market milk to compensate them for the labor cost incurred in bottling the milk for delivery to distributors.

B. The adjusted base price.

The provision in regard to the computation of the adjusted base price is found under the heading "Establishment of Adjusted Base Price" in Exhibit C of the License.

This provision is necessary in order that all producers share equitably in the gains to be derived by the classification of sales of milk according to use, and to distribute the surplus burden among all producers, as set forth hereinafter under the heading "Classification of Sales and the Market Pool." This provision provides that the losses engendered in the disposal of the surplus be deducted from the established base price to be paid producers.

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Prior to the Agreement, the members of the associations of producers handled the entire surplus. Under this arrangement, non-member producers were able to receive Class I prices on a substantially larger proportion of their sales than were those producers who were members of associations. Consequently, a minority group received an advantage to the disadvantage of the majority of producers supplying the Los Angeles Sales Area.

The milk price war that prevailed in the Los Angeles market in July, 1932, is evidence that the surplus burden of the market must be borne by all producers. Losses incurred by members of the associations of producers at that time operated the surplus plant became so severe that in July, 1932, the associations refused to carry the entire surplus burden and closed the surplus plant, thus throwing an additional gallonage in excess of 30,000 gallons of milk upon the market, resulting in a marked decline in the prices received for milk by both producers and distributors. As pointed out hereinbefore, such price wars, in addition to causing marked financial losses on the part of both producers and distributors, also burden and effect the interstate and foreign commerce in dairy products.

C. Classification of sales and the market pool.

The foregoing considerations, discussed in connection with the price schedule, also furnish the justification for the classification of milk sales in accordance with ultimate use. In addition, the economic fact is that a

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specified quantity of milk retails for a higher price when sold as Class I (or Grade A) milk (fluid milk) than when sold as surplus milk (milk used in the manufacture of butter and other manufactured dairy products).

Some surplus production over and above the fluid sales in the market is inevitable during all seasons of the year. Moreover, milk production varies from day to day and from season to season upon individual farms and for the market as a whole. Sales and consumption of milk and cream, while varying less from season to season, nevertheless show marked variation from day to day and also to some extent from season to season. This variation extends to the individual delivery routes of each distributor causing "route returns" and "route shortages." The sales of milk and cream by the various distributors in the market in relation to each other are undergoing changes at all times. Under these conditions it is impossible for the individual producer or for any group of producers to correlate production to the fluid demand of a particular distributor or of the market as a whole. So important are these factors that if a distributor were free to order in advance his requirements for Class I milk he would average from 10 to 20 percent surplus. Therefore, it is impossible to avoid having a limited supply of surplus milk in the market at all times.

An outlet must be furnished for this surplus milk, and the burden of the surplus should be distributed fairly and equitably among the producers. As indicated above, the distributor must sell his manufactured milk products

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in competition with manufactured milk products generally. Similarly, cream prices are subject to pressure from cream shipped in from distant cream producing areas, the price of which directly affects the prices at which distributors can sell the cream derived from the milk of producers in the milk shed.

If all milk were paid for on a flat price basis, the individual distributor would tend to restrict his purchases to his fluid requirements. A price high enough to compensate the producer for his relatively high cost of production would not be sufficient to pay the distributor for manufacturing butter and other products for sale under such competitive conditions, and might even encourage him to import his cream from beyond the borders of the milk shed. The burden of the surplus production would be shifted by the distributor to individual producers in a disproportionate manner, the distributor declining to accept milk from some producers while taking the entire quantity of others. Under such circumstances, the prices paid by distributors tend to become depressed toward the level of butter prices, without regard to quality or cost of production.

Classification of sales of milk in accordance with its ultimate use, enables the distributor to accept all milk delivered to him by producers by authorizing payment for milk used to produce cream and for manufacturing purposes at prices which are reasonably correlated with the competitive prices which the distributor must meet.

With sales of milk classified according to ultimate use, the market pool is required in order that each producer

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may be given a fair proportion of the fluid market. The price paid to each producer must be based upon the average sales and usings in the various classes of all distributors in the market. Otherwise, each producer would be paid according to the actual use made by the particular distributor to whom his milk was delivered, which would rarely coincide with the average use of all distributors in the market.

D. The base surplus plan.

The primary aim of the base surplus plan is to encourage production at a uniform level throughout the year, aiding in bringing about a closer seasonal adjustment of production to market needs. Normally, production varies substantially from month to month depending upon seasonal changes and production conditions, the normal period of high production being the months of April, May and June when pasturage is usually abundant. High production during these months is normally followed by correspondingly low production during September, October and November. Consumption also varies throughout the year but without appreciable relation to the variation in milk production. The base surplus plan provides an incentive to producers to keep their production at a uniform level throughout the year and compensates them for making the necessary adjustment, to the end that the market may be assured at all times of an adequate supply of milk suitable for fluid consumption. The established base assigned to each producer is related to the quantity of milk produced by him during the normally low production months.

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At the same time, by assigning to each producer a definite production quota representing the amount of milk for which he will be paid at the higher blended price, an equitable relation among producers is maintained. Each producer is given his fair share of the fluid market, represented by his established base, while the surplus production of each producer over and above his base is paid for at the surplus price. If the producer allows his average production to fall substantially below his base, his base will be adjusted downward.

Experience shows that this plan tends to accomplish the desired end. The fluctuation in production from month to month becomes less and less pronounced.

The classified price plan and the base surplus plan have also been in successful operation for a number of years in the following markets: Chicago, Philadelphia, Baltimore, Washington, Milwaukee and Detroit. The plan provided for in the License for the stabilization of the fluid milk market, the assurance to producers of a fair price for milk, and the securing of a uniform price to all producers by requiring all producers to bear their fair share of the surplus burden is thus not new or untried. The essential features of this plan have been incorporated in voluntary agreements entered into by associations of producers in many of the principal metropolitan areas during the past ten years. Such voluntary methods have not heretofore proved entirely successful for the reason that producers and distributors who did not voluntarily agree to the plan and were free to operate on an unrestricted basis undermined the position in the

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market of producers and distributors who were bound by the plan. It is of the essence of any plan for stabilization of the market in any milk shed that all producers and distributors supplying or distributing milk to such milk shed participate therein and be bound thereby.

E. The minimum wholesale, resale and retail price schedule.

The License provides for a schedule of minimum resale and retail prices. In certain cases, the establishment of such minimum wholesale prices is necessary: (1) to eliminate unreasonable price cutting which tends to lower the prices received by producers of fluid milk and in some cases to endanger the supply of milk needed to meet fluid requirements; and (2) to place all distributors and producers on an equitable, comparable basis.

The inclusion of the minimum price schedule in the License tends to prevent unreasonable price cutting, which is often resorted to by some distributors in order to secure a large volume of business in the hope of recovering the losses so engendered at some future time. Such unreasonable price cutting tends to demoralize the market and make impossible the maintenance of the fixed producer price, operating to the disadvantage of producers and distributors generally, and may in some cases endanger the milk supply by forcing out of business some producers and distributors necessary to supply normal fluid milk requirements. However, while the establishment of a schedule of minimum resale prices tends to eliminate unreasonable price cutting, it does not

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prevent efficient distributors from selling at margins considerably below those prevailing among the less efficient distributors. The establishment of minimum resale prices therefore tends to bring about more efficient distribution of milk.

As was pointed out hereinabove, price wars, extensive price cutting, and other methods of destructive competition had resulted in a decidedly unstabilized price structure in the Los Angeles Milk Market prior to the issuance of the License. Therefore, in order to eliminate such methods of destructive competition and to thereby stabilize the price structure in the Los Angeles Milk Market, it was necessary to establish the minimum wholesale, resale and retail price schedule. The prices so established allowed distributors to realize practically the same margins that prevailed prior to the issuance of the License.

VI. THE PROVISIONS OF LICENSE FOR MILK, LOS ANGELES, SALES AREA, LICENSE NO. 57, ISSUED MAY 31, 1934.

The License is designed to accomplish the following purposes:

(1) To fix a fair and reasonable price which producers of milk shall receive for milk sold by them and to insure the receipt of such price by them. Inasmuch as milk sold by distributors for consumption as whole milk commands a higher price on the market than milk sold in the form of cream, which in turn commands a higher price than milk sold in the form of butter or other manu-

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factured products, said License classifies milk in accordance with the several uses made thereof and fixes a price to be paid to producers for each of the several use classifications depending upon the ultimate use actually made of such milk. The fixation of prices upon the basis of use made of milk by distributors benefits all distributors, since it permits them to pay a price for their milk which is correlated with the price received by them for such milk in the form in which it is sold. The price for each class of milk, fixed by said License, complies with the provisions of the Act in that it approaches the parity price of milk as defined by the Act, insofar as the current consumptive demand for milk in the Los Angeles Sales Area and the country at large permits.

(2) To assure to all producers a uniform price for their milk, irrespective of the actual use of such milk made by the particular distributor whom each producer supplies. Because of the provisions in said License, classifying the prices of milk purchased from producers on the basis of the ultimate use actually made of such milk by distributors, producers supplying an equal quantity of milk of the same quality to different distributors, would receive different prices for their milk if each distributor were to pay the producer supplying him on the basis of his individual use of milk. In order to avoid this inequitable result, and at the same time to require each distributor to pay for milk purchased by him only at prices determined on the basis of the actual use made of such milk by him, the License provides for an equalization pool which operates as follows: Each

(Testimony of E. W. Gaumnitz)

distributor is required to report monthly the actual uses made by him of all milk purchased by him from producers. The average value per hundredweight of milk purchased by all distributors (on the basis of the use of such milk by all distributors) is then determined by dividing the total purchase price owing from distributors by the total quantity of milk purchased by them. The License requires each distributor to pay to producers supplying him with milk, on the basis of such average price. This results in requiring certain distributors to pay more for milk purchased by them than the use value of such milk to them, whereas other distributors pay less for the milk purchased by them than its use value to them. The License, therefore, further provides for an adjustment account whereby payments for milk by distributors are equalized on the basis of the actual use value to each distributor of the milk purchased by him. Thus each distributor, the value of whose milk (based upon his use thereof) is not as great as the average value of all milk used in the market (based upon the average use thereof by all distributors) is reimbursed by payments from other distributors, the value of whose milk (based upon their use thereof) is in excess of the average value of all milk used in the market.

(3) To eliminate unreasonable price cutting which tends to demoralize the milk market. The economic depression has reduced the consumptive demand for milk. Distributors in an effort to secure for themselves a larger share of the market, have resorted to cutting the resale price of milk, making impossible the maintenance of a

(Testimony of E. W. Gaumnitz)

fixed price to producers and thereby reducing the price paid producers for milk.

A. Cost of milk to distributors.

According to the provisions of the License, distributors are required to pay the following prices per pound of butterfat contained in milk purchased from producers, delivered f.o.b. distributor's plant in the Los Angeles Sales Area:

Class I—55 cents.

Class II—The average price per pound of 92-score butter at wholesale in the Los Angeles Market as reported by the United States Department of Agriculture for the delivery period during which such milk is purchased, plus 40 percent of such amount, plus 12 cents.

Class III—The average price per pound of 92-score butter at wholesale in the Los Angeles Market as reported by the United States Department of Agriculture for the delivery period during which such milk is purchased, plus 40 percent of such amount, plus 6 cents.

Class IV—The average price per pound of 92-score butter at wholesale in the Los Angeles Market as reported by the United States Department of Agriculture for the delivery period during which such milk is purchased, plus or minus, as the case may be, $\frac{1}{4}$ cents for each one cent that such price is above or below 25 cents, plus 4 cents.

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The term "delivery period" means the period from the first to, and including, the last day of each month.

Class I milk means all milk sold or distributed by distributors as whole milk for consumption in the Los Angeles Sales Area.

Class II milk means all milk used by distributors to produce cream for sale or distribution by distributors as cream for consumption in the Los Angeles Sales Area.

Class III milk means all milk sold or used by distributors to produce ice cream and/or ice cream mix, for consumption in the Los Angeles Sales Area.

Class IV milk means the quantity of milk purchased, sold, used or distributed by distributors in excess of Class I, Class II and Class III milk.

The price set for Class I milk of \$2.20 per hundredweight of 4 percent milk (or 55 cents per pound of butterfat) is somewhat lower than the June, 1934 parity price of \$3.07 per hundredweight of Class I milk. The prices as set in the License tend to sustain and raise prices received by producers supplying milk to the Los Angeles market towards parity levels. However, there are certain economic considerations which impose limitations on the prices which may justifiably be set and maintained, thereby preventing an immediate increase in prices to the parity level.

Class I milk sold for consumption as milk must be produced under highly sanitary conditions in accordance

(Testimony of E. W. Gaumnitz)

with local health regulations. The cost of producing such milk is therefore substantially higher than the cost of producing milk used in the manufacture of butter, cheese, condensed and evaporated milk, and other manufactured milk products, and a higher price to the producer of such milk is economically justified. However, such prices must be maintained in a reasonable relationship to the prices received by producers of manufacturing milk. If a price for Class I milk were fixed at an unreasonably high figure above the prices received by producers for manufacturing milk, producers who had formerly produced milk for only manufacturing purposes would equip their farms for the production of high quality milk. This would tend to subject the fluid market to serious pressure through substantially increasing the market surplus, and would tend to result in a lower average price for all producers in the market.

The average prices paid producers in California for milk purchased by condenseries during 1933 and during the first five months of 1934, respectively, were as follows:

1933	\$0.95 per hundredweight
First five months of	
1934	.95
January	.80
February	.98
March	1.04
April	.96
May	.97

(Testimony of E. W. Gaumnitz)

The differential between the above prices and the price provided in the License for Class I milk represents (1) a fair and reasonable premium to compensate the producer for the additional costs of producing high quality milk, and (2) an allowance to compensate producers for the higher costs of transporting fluid milk, which is bulky and perishable, and (3) an allowance to compensate the producer for maintaining a relatively stable volume of production of high quality milk somewhat larger than the average volume actually sold as Class I milk in the market, this volume in addition to actual average sales being required to meet daily fluctuations in the demand for fluid milk. The price for Class I milk provided in the License is higher than that prevailing before the License was put into effect. The License was necessary in order to maintain higher prices, and to provide the machinery for further increasing such prices when economic conditions warrant such increases.

The Class II price applies to milk used by distributors to produce cream for consumption as cream, and is related directly to the wholesale price of 92-score butter at Los Angeles. The market for such milk, derived from the excess milk of local producers over and above the Class I requirements of the market, is subject to pressure from distant cream producing areas; for the cream equivalent of milk used to produce cream, by reason of its lesser bulk, can be profitably shipped into the Sales Area from distant producing areas. In order to maintain a reasonable share of the cream market for local producers, it is essential that the Class II price be main-

(Testimony of E. W. Gaumnitz)

tained at a level not unreasonably high in relation to the prices at which cream supplied by distant cream producing areas is available in the Sales Area. The prices received for cream in distant producing areas depend upon the prices of manufactured dairy products. Due to the fact that these products are readily storable and transportable, the price of milk for manufacturing purposes is set by national supply and demand factors outside of the scope of the Los Angeles License. It becomes necessary, therefore, to maintain Class II prices in the Los Angeles area in relationship with the price obtained by producers of manufacturing milk. Since the production and price of manufactured dairy products vary seasonally, it is necessary to allow Class II prices to vary rather than to be fixed throughout the year. By the formula method of computation, changes in the Class II prices are allowed in relationship to the price of manufactured products. In addition to the foregoing, the Class II price specified in the License allows the producer reasonable compensation for producing milk of a sufficiently high quality to meet the health requirements for cream in the Los Angeles Sales Area.

The prices of Class III milk, which is the milk used to produce ice cream and/or ice cream mix, and Class IV milk, which is the milk in excess of Class I, Class II and Class III sales in the market, are also related directly to the price of butter, since the manufactured products derived from such excess milk must be sold in direct competition with butter and other manufactured products, the prices of which are determined by national

(Testimony of E. W. Gaumnitz)

supply and demand forces (due to the fact that such manufactured products are readily storable and transportable) outside of the scope of the License.

The foregoing considerations and competitive factors impose limitations upon the prices which may justifiably be fixed and maintained under the License. As prices of dairy products rise generally, the prices for Class I, Class II, Class III and Class IV milk will be increased and will further tend gradually to approach the parity price.

B. The minimum resale price schedule.

The necessity for including this schedule in the License has already been discussed in connection with License No. 17.

The resale prices specified in this License are reasonable, since (1) the margin between the prices received by the producer and the price paid by the consumer is materially lower than the actual margin prevailing in the Los Angeles Sales Area, and (2) the License provides that the schedule of minimum resale prices may be revised, provided it is shown that such prices are higher than is necessary to maintain the prices to producers.

The following table indicates the margin between prices received by producers and prices paid by consumers under the provisions of the minimum resale price schedule.

(Testimony of E. W. Gaumnitz)

Minimum Resale Prices

Distribu- tion Unit	Wholesale Price (cents)	Price to Venders (cents)	Retail Wagon Price (cents)	Price to Farmers (cents)	Margin (Farmer to consumer) (cents)
Milk 4.0%					
Half pint	3	2	.....	1.2	1.8 whol.
1/3 quart	4	3	.....	1.6	2.4 whol.
Pint	5	4	6	2.4	3.6
Quart	8	6.5	9	4.7	4.3
Gallon	26	23	.....	18.9	7.9 whol.

The margins between prices received by producers and prices paid by consumers for milk, as prevailing in May, 1934 (prior to the License) and July, 1934, were as follows:

May, 1934

Distribution Unit	Wholesale Price (cents)	Price to Venders (cents)	Retail Wagon Price (cents)	Price to Farmers (cents)	Margin (Farmer to Consumer) (cents)
Milk 4.0%					
Half pint	.....	.....	.....	1.1	
Pint	.....	.....	.....	2.2	
Quart	6	8	10	4.4	5.6
Gallon	23	.....	.....	17.6	5.4 whol.

July, 1934

Milk 4.0%					
Half pint	.....	.....	.....	1.2	
Pint	.....	.....	.....	2.4	
Quart	8	9	11	4.7	6.3
Gallon	27.5-32	.....	.....	19.0	8.5-13.0 whol.

The amount by which distributors' margins under the schedule of minimum resale prices in the License are

(Testimony of E. W. Gaumnitz)

below those actually prevailing in the Los Angeles market for July, 1934, is thus 2.0 cents per quart.

C. The classified price plan and the market pool.

(1) The adjustment features of the License.

The necessity for the classification of milk according to ultimate use and the requirement that each producer be paid upon the average sales and usings in the various classes of all distributors in the market has already been pointed out in connection with License No. 17. The requirement of this License that each producer be paid upon the basis of the average using of the entire market necessarily leads to further provisions relating to adjustments as between distributors. The adjustment features included in License No. 57 (see Exhibit A, Section B) are designed, with respect to the cost of milk to distributors, (1) to insure that Class I milk be drawn from sources nearest the market, thus effecting *economics* which will accrue to the benefit of producers; (2) to allow reasonable charges which will reflect the cost of transporting milk to the market, and (3) to prevent the use of unreasonable country station charges which could offset the benefits to producers of the price features of the License. These features of the License provide, moreover, with respect to equity among producers, (1) that the advantage of location of individual producers shall be recognized, and (2) that the *economics* mentioned above shall be reflected through the blended price for delivered bases.

(2) Classification and the market pool as applied to producer-distributors.

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The various provisions of the License are designed to treat all distributors and all producers in as equitable a manner as possible, therefore, the functions of production and distribution must be thought out separately, and where they are combined, special treatment must be provided in order to maintain this equality.

Each distributor who is also a producer is required to report to the Market Administrator the sales which represent his own production as well as the sales which represent the production of other producers. Such a distributor is exempt as to each delivery period (except the first three full delivery periods during which he sells or delivers milk as a new producer) from equalization adjustments if he handles only milk produced by himself and does not sell his surplus milk to other distributors or to manufacturing plants. The exemption is limited to an average daily volume of sales up to and including 20 pounds of butterfat, which amount is to be adjusted from time to time by the Market Administrator so as to approximate the average amount of Class I and Class II milk handled per retail route by all distributors in the Los Angeles Sales Area.

It is necessary to include in the market pool distributors who are also producers, because (1) if they were not included, it would give such distributors an advantage over other distributors, and/or (2) it would give such distributors, as producers, an advantage over other producers. This would be true because such a distributor would seek to dispose of his entire supply as Class I milk, which would result in either a higher price to him-

(Testimony of E. W. Gaumnitz)

self as a producer or a wider margin to himself as a distributor. Distributors of this type handle a substantial proportion of the milk distributed in the Los Angeles Sales Area and if such distributors are given an advantage in the market, there will be a tendency for them to increase in numbers and in volume of business in the Sales Area. This would result in a tendency for additional producers to enter into the distribution of milk or additional distributors to enter into the production of milk in order to gain a similar advantage either as producers or as distributors. The surplus burden of the market, therefore, would be weakened accordingly.

The exemption granted distributors under the above conditions is for the purpose of reducing administrative difficulties insofar as possible, because the cost of operating the market pool and collecting and disbursing the adjustment funds per unit of volume is relatively large on small accounts.

D. The base surplus plant.

The necessity for an explanation of the base surplus plan, which is also included in License No. 57, has already been stated in connection with License No. 17.

VII. THE PROVISIONS OF THE AMENDMENT TO LICENSE No. 57 EFFECTIVE AUGUST 22, 1934.

By an amendment to License No. 57, effective August 22, the price of Class I milk has been increased from 55 cents to 61 cents per pound butterfat. The increase is justifiable on the basis (1) that the prices of other dairy products, especially butter, have increased markedly since

(Testimony of E. W. Gaumnitz)

License No. 57 was issued, and (2) wide-spread drought has sharply curtailed feed supplies, thereby increasing the cost of production of milk, especially in the Los Angeles Area, since most of the dairy farms in this area are highly specialized and most of the feed for dairy cows is purchased.

The minimum resale price schedule has been revised somewhat, but since the margins under the revised schedule and the schedule previously obtaining are practically the same, the justification set forth above is satisfactory.

The following table indicates the margin between prices received by producers and prices paid by consumers under the provisions of the original minimum resale price schedule:

Minimum Resale Prices

Distribution Unit	Wholesale Price (cents)	Price to Venders (cents)	Retail Wagon Price (cents)	Price to Farmers (cents)	Margin (Farmers to Consumer) (cents)
Milk 4.0%					
Half pint	3	2	.....	1.2	1.8 whol.
1/3 pint	4	3	.....	1.6	2.4 whol.
Pint	5	4	6	2.4	3.6
Quart	8	6.5	9	4.7	4.3
Gallon	26	23	.....	18.9	7.9 whol.

The following table indicates the margin between the prices received by producers and the prices paid by consumers according to the amended minimum resale price schedule:

(Testimony of E. W. Gaumnitz)

Minimum Resale Prices

Distribution Unit	Wholesale Price (cents)	Price to Venders (cents)	Retail Wagon Price (cents)	Price to Farmer (cents)	Margin (Farmer to Consumer) (cents)
Milk 4.0%					
Half pint	3.0	2.0	.....	1.3	1.7 Ws.
Pint	5.0	4.0	6.0	2.6	3.4
Quart	8.5	7.0	9.5	5.2	4.3
Gallon	29.0	25.0	.....	21.0	8.0 Ws.

STIPULATION OF COUNSEL

We agree that the foregoing narrative is a true and correct description and transcript in narrative form of all the evidence introduced at the hearing for the preliminary injunction and upon the motions to vacate and dissolve the preliminary injunction and to dismiss the proceeding in the above-entitled cause; the lodgment of said statement in the office of the Clerk and the notification to the appellees of such lodgment are hereby waived.

This day of October, 1934.

LEWIS D. COLLINGS

EDWARD W. SELBY

H. C. JOHNSTON

by L. D. COLLINGS

Solicitors for Plaintiffs.

Peirson M. Hall

PEIRSON M. HALL,

United States Attorney for the Southern
District of California.

Clyde Thomas
CLYDE THOMAS,
Asst. United States Attorney

Mac Asbill
MAC ASBILL
Special Assistant to the Attorney
General.

E. H. Whitcombe
E. H. WHITCOMBE
Ferrand & Slosson
FERRAND & SLOSSON,
Attorneys for Defendants.

ORDER APPROVING NARRATIVE STATEMENT
OF THE EVIDENCE

The foregoing narrative statement is hereby approved and ordered filed as a part of the record for the purpose of the appeal herein, same being the narrative statement referred to in the stipulation and transcript of record herein filed by counsel.

This 30th day of October, 1934.

GEO COSGRAVE
United States District Judge.

[Endorsed]: Filed Oct 30, 1934 R. S. Zimmerman,
Clerk. By Francis E. Cross, Deputy Clerk.

[TITLE OF COURT AND CAUSE]

No. 144-C-Eq.

STIPULATION

It is hereby stipulated by and between the parties to the above-entitled action that in preparing the record for appeal in said action the endorsements on all papers filed in the Clerk's office may be omitted with the exception of the filing endorsement of the Clerk, and that the title of court and cause may be eliminated from each paper filed, substituting therefor the words "title of court and cause" except on the Bill of Complaint, the order or decree of the court for preliminary injunction, and petition for appeal.

Dated: October 31, 1934.

LEWIS D. COLLINGS

EDWARD M. SELBY

H. C. JOHNSTON

by LEWIS D. COLLINGS

Attorneys for Plaintiffs.

Peirson M. Hall

PEIRSON M. HALL,

United States Attorney for the Southern
District of California.

Clyde Thomas

CLYDE THOMAS,

Asst. United States Attorney

E. H. Whitcombe

E. H. WHITCOMBE

Ferrand & Slosson

FERRAND & SLOSSON,

Attorneys for Defendants.

[Endorsed]: Filed Nov 1, 1934 R. S. Zimmerman,
Clerk. By L. Wayne Thomas, Deputy Clerk.

[TITLE OF COURT AND CAUSE]

No. 144-C-Eq.

ORDER ALLOWING ATTACHMENT OF COPY OF
EXHIBIT TO PRINTED RECORD

Good cause appearing therefor, on motion of Peirson M. Hall, United States Attorney for the Southern District of California, and Clyde Thomas, Assistant United States Attorney for said district, it is hereby ordered that in the preparation of the record on appeal now being perfected from the preliminary injunction and order denying motion to dissolve the same, that Exhibit "A" of the original Bill of Complaint, being License No. 57 and Marketing Agreement, need not be printed but that the Government pamphlet publication thereof may be inserted in the printed transcript of record.

Dated: Oct. 31, 1934.

GEO. COSGRAVE

United States District Judge.

The above order is hereby consented to. "

CURTIS D. WILBUR

United States Circuit Judge for the Ninth Circuit.

(ENDORSED): FILED NOV 5—1934. R. S. ZIMMERMAN, Clerk, by Edmund L. Smith, Deputy Clerk.

[TITLE OF COURT AND CAUSE]

IN EQUITY

No. 144-C

STIPULATION IN LIEU OF PRAECIPE

It is hereby stipulated by and between counsel for the respective parties hereto that the transcript of record on appeal to the United States Circuit Court of Appeals herein shall consist of the following:

1. Bill of Complaint filed on January 11, 1934, with exhibits thereto.

2. Motion for leave to file supplemental bill of complaint and notice of motion.

2-a. Minute Order of September 4, 1934.

3. Order to show cause and restraining order dated and filed August 9, 1934.

4. Supplemental bill of complaint with exhibits thereto.

5. Motion of Los Angeles Milk Industry Board, Richard Cronshey, William Corbett, David P. Howells, Geo. A. Cameron, F. A. Lucas, Earl Maharg, A. G. Marcus, M. H. Adamson, T. E. Day, W. H. Stabler, Max Beuchert, C. W. Hibbert, W. J. Kuhrt, George E. Platt, A. M. McOmie, T. H. Brice, T. M. Erwin, A. R. Read, R. C. Perkins and Ross Weaver, for an order dismissing the proceeding and notice of motion filed August 28, 1934.

6. Motion of Milk Producers, Inc., for an order dismissing the proceeding and notice of motion filed, August 28, 1934.

7. Motion of Harry W. Berdie for an order dismissing the proceeding and notice of motion filed August 29, 1934.

8. Objections of defendants, Anders Larson, H. C. Darger and Peirson M. Hall, filed September 1, 1934, to application of plaintiffs for a preliminary injunction and for leave to file supplemental bill of complaint.

9. Ruling of court on motions to vacate temporary restraining order, objections to allowance of supplemental bill of complaint and to dismiss proceedings filed September 7, 1934.

10. Preliminary injunction signed and filed on September 20, 1934.

11. Objections under Rule 44 to form of preliminary injunction.

12. Motion to dissolve preliminary injunction filed September 25, 1934, with notice of motion.

13. Motion to dismiss proceeding filed September 25, 1934, and notice of motion.

14. Minute Orders of October 1, 1934, and October 3, 1934, overruling motions to vacate preliminary injunction and to dismiss proceedings with exception to said orders.

15. Order amending Minute Order of October 3, 1934.

16. Petition for appeal.

17. Assignment of Errors.

18. Order allowing appeal.

19. Narrative statement of the evidence, stipulation of counsel, and order approving same.

20. Citation on appeal.

21. Order of court allowing insertion of License No. 17 in printed Transcript of Record.

22. This stipulation.

DATED: This 31st day of October, 1934.

LEWIS D. COLLINGS
EDWARD M. SELBY
H. C. JOHNSTON
by LEWIS D. COLLINGS
Solicitors for Appellees.

Peirson M. Hall,
PEIRSON M. HALL,
United States Attorney for the Southern
District of California.

Clyde Thomas
CLYDE THOMAS,
Assistant United States Attorney.

Mac Asbill
MAC ASBILL,
Special Assistant to the Attorney General.

E. H. Whitcombe
E. H. WHITCOMBE
Farrand & Slosson
FARRAND & SLOSSON,
Attorneys for Defendants.

[Endorsed]: Filed Nov. 1, 1934. R. S. Zimmerman,
Clerk. By L. Wayne Thomas, Deputy Clerk.

CLERK'S CERTIFICATE

I, R. S. ZIMMERMAN, Clerk of the United States District Court for the Southern District of California, do hereby certify the foregoing volume containing pages, numbered 1 to, inclusive, to be the Transcript of Record in the above entitled cause, as printed by the Appellant and presented to me for comparison and certification, and that the same has been compared and corrected by me, and contains full, true and correct copies of:

Citation on Appeal.

Bill of Complaint with Exhibits.

Notice of Motion to File Supplemental Bill of Complaint.

Motion for Leave to File Supplemental Bill of Complaint.

Minute Order of September 4, 1934.

Supplemental Bill of Complaint With Exhibits (Omitting Exhibits A and B Which appear in Original Bill).

Order to Show Cause and Restraining Order.

Motion of Los Angeles Milk Industry Board, et al., for Order Dismissing Proceedings.

Motion of Milk Producers, Inc., for Order Dismissing Proceedings.

Motion of Harry W. Berdie for Order Dismissing Proceedings.

Objections of Defendants Anders Larson, et al., to Application for Preliminary Injunction.

Ruling of Court on Motions to Vacate Temporary Restraining Order, etc.

Preliminary Injunction.

Objections Under Rule 44 to Form of Preliminary Injunction.

Motion to Dissolve Preliminary Injunction.

Motion to Dismiss Proceedings.

Minute Orders (2) Overruling Motions to Vacate Preliminary Injunction and to Dismiss Proceedings, With Exceptions Thereto .

Order Amending Order of October 3rd, 1934.

Petition for Appeal.

Assignment of Errors.

Order Allowing Appeal.

Narrative Statement of Evidence, Stipulation of Counsel, and Order Approving Same.

Stipulation Re: Diminution of Record.

Order of Court Allowing Substitution of License 17 (Printed Pamphlet) in Record.

Stipulation in Lieu of Praecipe.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the District Court of the United States, for the Southern District of California, Central Division, this.....day of....., in the year of our Lord One Thousand Nine Hundred Thirty-Four, and of our Independence, the One Hundred and Fifty-ninth.

(SEAL)

R. S. ZIMMERMAN,

Clerk of the District Court of the United States, in and for the Southern District of California.

By.....

Deputy Clerk.